No. 231.

IN THE

APR 7 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 231.

Brf. of Moore & Leave v. Watson & Co
Appellees.
Filed April 7, 1902.

CHRISTIAN SCHWARTZ et al.
Plaintiffs Below and Appellants,

VERSUS

JOHN S. DUSS et al.
Defendants Below and Appellees.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

APPELLEES' BRIEF.

JOHNS McCLEAVE,
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Attorneys for Appellees.

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IN THE

Supreme Court of the United States,

No. 231, October Term, 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota, APPELLANTS,

versus

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINE LAUTERSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

The plaintiffs below, appellants here, seek, in this suit, to recover a portion of the property of the Harmony Society. They claim this, *not* because of any direct property interest either pretends to have, nor because either ever was a mem-

ber of said society, but because, as they allege, their ancestors, in more or less remote degrees of consanguinity or affinity, at some period long past, *were* members, and also because, as appellants allege, the society has been dissolved, *therefore*, they (appellants) are entitled to a share of and in the property of the society.

Thus, two main questions arise :

(1) Is either one of the appellants a part owner in the property of the Harmony Society and entitled to any interest therein, even if the society had been dissolved ?

(2) Has the Harmony Society been dissolved ?

In the master's report, both of these questions were fully discussed and decided *against* the appellants. On exceptions to this report the Circuit Court again heard arguments on both, but agreeing with the master that the society had not been dissolved, the court thought it was not necessary to pass upon the other question, and affirmed the master's report. The Circuit Court of Appeals heard both questions anew, but followed the Circuit Court—affirmed the decree below on the ground that the society was still in existence, but did not decide the other question.

We believe this court will find it more convenient, and we will be the better able to present our views with simplicity and directness, if we take up each question separately and follow the master and the court below in that direction, in-

stead of taking up seriatim the assignments of error filed by appellants. We can thus more speedily present our case and assure the court of a plain statement of what we claim, both as to facts and law connectedly on each question, and, at the same time, answer all assignments of error.

RECORD IN THIS COURT.

Counsel have agreed that the record to be printed shall consist of the pleadings, the master's report, opinions of the courts below; and the only testimony shall be

> "all agreements, articles and constitutions of the society from 1805 to 1894, inclusive, charter records of the Union company, all releases or quit-claims of retiring members between 1890 and date of filing bill."

The master's report includes all these agreements, charter records and quit-claims, and finds the facts on all controverted questions, and as none of the vast mass of testimony in the case has been printed, the stipulation aforesaid practically makes, and this in addition to the ordinary rule in such cases, the master's report conclusive. This renders unnecessary the discussion of many questions of fact which were fully discussed in the testimony before the master, the Circuit Court and the Circuit Court of Appeals. All the facts on which the questions to be decided depend will be found in the master's report.

These will not be discussed in this brief, except so far as may be thought advisable to a clear apprehension of the case.

BRIEF SKETCH OF THE HARMONY SOCIETY.

In 1804 and 1805, George Rapp and certain of his followers left the kingdom of Wurtemburg and came to the United States. They settled first in Harmony, Butler county, Pennsylvania, then moved to Wabash, Indiana, and came to Economy, in Beaver county, Pennsylvania, in the year 1825.

In the year 1805, they organized the Harmony Society by a written agreement bearing that date, which is in evidence. This written agreement was followed by another agreement made by the society in 1827; by another one in 1836; by another one in 1847, and by subsequent ones in 1890 and 1892; and in addition there was another written agreement in 1821. All of these agreements, except that of 1821, are in evidence, and are analyzed in a subsequent part of this brief.

Prior to 1847, the property of the society and its external business was in the hands of a general agent. Frederick Rapp, up until his death, held that position, and at his death, in 1834, George Rapp was appointed to take his place. The society did carry on agricultural pursuits, but, at the same time, largely engaged in many other enterprises, such as saw mills, distilleries, glass plants, etc., etc.

In 1827, the written agreement stated that the society was based on Christian fellowship, and that that fellowship included the patriarchal government and the community of goods adopted in the days of the Apostles, and also stated that the sole aim of the society was to approximate to the fulfillment of the will of God by the practice and observance of those affections and virtues which are essential to man's happiness here and hereafter.

From 1825 the possessions of the society increased largely, but in 1832 what was known as the Count De Leon conspiracy took place, which resulted in a division of the society and a distribution of a part of its assets. The agreement showing this division and distribution is dated March 6, 1832, is in evidence as Exhibit No. 82, and is signed by all those then comprising the Harmony Society.

From 1832 down until 1890, the *bill* in this case avers that peace and prosperity attended the society.

That there was this long period of prosperity during which the society

> "had rigidly adhered to its plan of government"

and had become

> "illustrious and highly respected."

That it had advocated the equality of man; had espoused the highest principals of Christianity; that its administration had been honest and benevolent, and this, whether in its internal affairs or in

> "its many transactions with the citizens of Western Pennsylvania."

In the statement of facts in the Nachtrieb case, 3 *Wallace, Jr.*, 70, it is said:

> "Notwithstanding the peculiarity of this community it had thus far been very prosperous. In the course of fifty years not one single member of the society had ever been criminally prosecuted. External order, cleanliness and apparent tranquility marked the settlement, and though occasional indiscretions occurred among the women, and certain discontents appeared to prevail among the men, it had thus far been a moral, well-governed and contented body." * * * *

ALLEGATION OF PLAINTIFFS' BILL.

The bill alleges that, in 1890, certain schemes were set on foot to wreck the society, and states those schemes to have been as follows:

(1) John S. Duss and others conspired to introduce Cyrus Teed and others into the Harmony Society, for the purpose of controlling the society, the result of which has overthrown and destroyed the government of the society, wasted its wealth, depleted its numbers, and placed the management of the society in his own hands. That prior to his joining the society, Duss was the friend and confederate of Cyrus Teed.

Yet the bill admits that this conspiracy was overthrown by the protestations of a number of members of the Harmony Society, and that after a failure of this conspiracy Duss abandoned it, but began a new conspiracy.

See paragraphs 10, 11, 12, of the bill.

(2) The new conspiracy is stated in paragraphs 14, 15, 16, 17, 18, 19, of the bill, and the purpose of it was to wreck and dismember the society, and attain for himself and confederates the entire assets of the society.

A step in this conspiracy was an agreement with Judge Hice and Reeves to use the money of the Harmony Society to pay the debts of the Economy Savings Bank; the borrowing of $400,000, and giving of the Darlington Mortgage on all the

real estate of the Harmony Society to secure its payment; the borrowing of $100,000, secured by a second mortgage on the same property; the sale of valuable dividend paying stocks in bridge companies, water companies, railroad companies, and other valuable corporations; by artifice and fraud securing most of the members to withdraw; and, paragraph 21st, by threats and intimidation inducing others to do so.

Paragraph 20 alleges the sale to the Union Company of the Economy land, but whether as part of this general conspiracy is not stated.

Paragraph 22d alleges that Duss is selling liquor without license, and 23d, that the principle of equality in the Harmony Society is no longer recognized or maintained. The 24th contains the charges as to Fredericka Kroll.

DISSOLUTION OF SOCIETY.

The averments in the bill as to the dissolution of the Harmony Society:

Paragraph 3d, the words are:

> "which has become dissolved as hereinafter stated."

Paragraph 25th:

> "That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and

practices established as aforesaid by the founders of said society, and by the ancestors of your orator, have been abandoned, * * * and that by reason of the facts herein before set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all said lands and tenements, and entitled to partition thereof in proportion to their respective interests."

Paragraph 26th :

"* * * that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust, (which your orators deny as being contrary to public policy, and void in law and equity), such trust has wholly ceased, and the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

THE PRAYERS OF THE BILL ARE AS FOLLOWS :

(1) A receiver ;

(2) Injunction to prevent the selling of property ;

(3) Discovery of the accounts, liabilities, debts and assets;

(4) That the Union Company be restrained from disposing of any portion of the property conveyed to it by the trustees ;

(5) That the deed by the trustees to the Union Company be declared fraudulent and void, and surrendered up to be cancelled ;

(6) That an account be stated against Duss for the losses that have been sustained through his fraud and mismanagement ;

(7) The marshalling of the assets, and a winding up of the affairs of the Harmony Society, and a division and distribution of the assets, real and personal, either by sale or partition, to and among the parties legally and equitably entitled thereto, including the plaintiffs, and that each may receive his share in severalty.

(8) Other relief.

(9) Subpœna.

ANSWER.

The answer in all material points flatly contradicted the averments of the bill. It denied all charges of fraud and improper conduct of any kind; all charges of conspiracy; denied that any one of the plaintiffs had any interest in the property of the company, and averred that the society was not dissolved, but in full life and vigor.

ISSUES RAISED.

It is clear that in order to entitle the appellants to a decree as prayed for in the bill they must prove,

(1) That the plaintiffs owned in part, or had property rights in, the real and personal estate of the Harmony Society as it at present exists, or did exist when the bill was filed, and has the present right of possession to a share of the said property.

(2) That the Harmony Society has been dissolved;

(*a*) By common consent of its members; or

(*b*) By the abandonment of the purposes for which it was founded.

MASTER AND COURTS BELOW.

The Circuit Court, upon request, and upon the written agreement of counsel on both sides, appointed a master to take testimony, find the facts and report the same, and his opinion on the law of the case to the court, giving to either side the right to except thereto.

The master took 2,907 pages of testimony (type-written), and there were in the case 96 exhibits.

After an elaborate argument, in which each side was allowed days to discuss their respective views of the case, and after the master had elaborately considered all the testimony he filed a written report, in which he found all the material facts and all the material questions of law against the plaintiffs, and recommended that the bill be dismissed.

To this report the appellants filed in the Circuit Court fifty-one (51) exceptions; and again, after a most liberal allowance of time for the oral discussion of the same, the court below (Judge Acheson) overruled all of the exceptions, approved all of the findings of the master, and made a decree dismissing the bill. The case is reported as Schwartz *et al.* vs. Duss *et al.*, 93 *Federal Reporter*, 528.

The Circuit Court of Appeals, consisting of Circuit Court Judges Gray and Dallas and District Judge Bradford, before whom the case was again exhaustively argued, affirmed the decree of the court below. The case is reported as Schwartz *et al.* vs. Duss *et al.*, 103 *Federal Reporter*, 561.

We, especially, ask the attention of this court to the findings of fact and the opinion of the master.

Every question in the case, great or small, was most carefully and elaborately examined. The report is well written, carefully considered, contains a full citation of authorities, and indeed is a remarkable document.

Judge Acheson of the Circuit Court regarded it as his duty to read, and he did read, all the evidence in the case, and his opinion discussed quite fully the salient points. He confirmed the master in every respect.

The Circuit Court of Appeals also fully considered the case, and in a unanimous opinion written by Gray, J., affirmed the Circuit Court.

We refer to these opinions of the Circuit Court and the Circuit Court of Appeals.

EFFECT OF THE FINDING OF FACTS BY THE MASTER AND COURTS BELOW.

This court said in Towson vs. Moore, 173 *United States*, 24:

> "A series of decisions of this court has established the rule that successive and concurrent decisions of two courts, in the same case, upon a mere question of fact, are not to be reversed, unless clearly shown to be erroneous."

Again, in Stuart vs. Heyden, 169 *United States*, 14, you said:

> "We will add that, as the Circuit Court and the Circuit Court of Appeals agreed as to what were the ultimate facts established by the evidence, this court should accept their views as to the facts unless it clearly appeared that they erred as to the effect of the evidence."

In Kimberly vs. Arms, 129 *U. S.*, 524, this court considered the effect of a master's report where the case was referred to him by the consent of parties, and said :

> "But when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with very different powers from that which he exercises upon ordinary referees without such consent ; and his determinations are not subject to be set aside and disregarded at the mere discretion of the court. * * * Its findings, like those of an independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed under the reservation contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence or in the application of the law, but not otherwise."

In this case the consent of the parties was in the following words (see record p.):

> "That to said Thompson shall be given as examiner and master the authority to hear and take all the testimony and to find all the issues of law and facts and to report the testimony and such findings to the court."

This court, therefore, has,

(I.)—Findings of the master on all the questions of fact and of law in favor of the appellees.

(II.)—The decree in the Circuit Court (Judge Acheson) affirming the master's report and dismissing the appellants' bill.

(III.)—The decree of the Circuit Court of Appeals affirming the decree of the Circuit Court.

In addition to all this, counsel in this court have agreed not to print the evidence save certain releases of retiring members, the charter records of the Union Company and the agreements which constitute the constitution of the society, all of which are fully considered by the master. This leaves the case in this court on the master's report affirmed as it is by the decrees of the Circuit Court and Circuit Court of Appeals.

That report stands not only for its direct finding of facts, but also for its inferences or deductions of facts from testimony. The latter, as well as the former, is distinctly within the jurisdiction of the master, and his deductions, especially when confirmed by the Circuit Court and Circuit Court of

Appeals, are not to be disregarded unless in the clearest manner manifest error is shown.

THE FIRST QUESTION.

The assignments of error, although fifteen (15) in number, can the more readily be grouped as raising but two questions:

(1) The property interest of the appellants.

(2) The dissolution of the Harmony Society.

We take up, then, the first question, which we state as follows:

(1) IS EITHER ONE OF THE PLAINTIFFS A PART OWNER IN THE PROPERTY, REAL OR PERSONAL, OF THE HARMONY SOCIETY, AND IF THE SOCIETY WAS NOW DISSOLVED WOULD EITHER BE DECREED A PART THEREOF?

The answer specifically asserts that no one of them is a part owner, and that even if the society was dissolved no one of the appellants could participate in the dissolution of its property. (See paragraphs six [6] and twenty-eight [28] of the answer.)

(*a*) No one of the plaintiffs seriously alleges that he is a member of the Harmony Society, or that he

ever was a member. The master and court below found that no one of them ever was a member. The appellants did not below, nor do they here, specifically assign error to such finding. For the convenience, however, of this court, if it desires to examine the question, we refer, briefly, to the facts given in detail in the master's Report. (Record, pp. 70 to 80)

Christian Schwartz did testify that he had intended to join the society on February 15, 1845, the Feast Day, but was unable to be present. That Father Rapp sent him in the night the Lord's Supper, which was given only to members, and that Father Rapp treated him as a member. He never did, however, join and so says. Other witnesses so testified.

Fredericka Muntz, who then was a member of the Harmony Society, testifies that Schwartz was not a member, nor was he treated as such.

In the bill the plaintiffs do not allege that Christian Schwartz was a member of the Harmony Society, but do allege (paragraph 3) that he went into the society in 1823, when three years old, and this, Schwartz explained in his testimony, was when his father and mother moved to Economy. Schwartz does not pretend *this* made him a member of the society, but his receiving the sacrament when he became of age, in 1845.

The master fully considers this question of the membership of Schwartz (see p. of record), and finds that Schwartz

"never became a member of the society."

(*B*) Each one of the plaintiffs claim a proprietary right or ownership in manner as follows:

(1) *Christian Schwartz.*

He claims through—

(*a*) His father, Christolf, and his mother, Barbara, who joined the Harmony Society, he thinks, in 1826 or 1827. The father died at Economy, still a member, in 1858; and his mother at Economy, still a member, in 1857.

They signed the agreement of 1827.

The agreement of 1836.

The agreement of 1847.

(*b*) His four sisters, as follows:

Katrina Schwartz: The date of her admission into the Harmony Society is not shown, but she died at Economy in 1888.

She signed the agreement of 1836.

She signed the agreement of 1847.

Fredericka Schwartz: The date of her admission is not shown, but she died at Economy in 1857.

She signed the agreement of 1836.

She signed the agreement of 1847.

Marie Schwartz: The date of her admission is not shown, but she died at Economy in 1878.

She signed the agreement of 1836.

She signed the agreement of 1847.

Louisa Schwartz: The date of her admission is not shown, but she died at Economy in 1888.

She signed the agreement of 1836.

She signed the agreement of 1847.

(*c*) His brother,

Joseph Schwartz: The date of his admission is not shown, but he died in 1889 at Economy.

He signed the agreement of 1836.

He signed the agreement of 1847.

---

(2) *Anthony Koterba:*

He claims through—

(*a*) His father, *Joseph Koterba:* Joseph joined the society, it would seem, some time prior to 1827, and withdrew therefrom on November 13th, 1827, married and had children, and died in the State of Ohio in 1860. He left a will, and issue—three sons and one daughter.

Joseph signed the agreement of 1827.

(*b*) *Andreas Koterba:* Does not show when he joined the society, but he died May 25th, 1880, at Economy.

Andreas signed the agreement of 1827.

He signed the agreement of 1836.

He signed the agreement of 1847.

---

(3) *David Strohaker:*

He claims through—

(*a*) *Christian Strohaker:* His paternal grandfather, who died in Wabash, Indiana, between 1820 and 1825.

There is no evidence that he ever joined the society, unless it be the signature to the agreement of 1805.

See also signatures to agreement of 1827.

(*b*) ——— *Strohaker:* His paternal grandmother, who died in Wabash, Indiana, between 1820 and 1824.

There is no evidence to show that she ever joined the society, nor does her name appear to any of the agreements.

(*f*) *Catharine Strohaker:* She died in Economy in 1865, and was the aunt of David Strohaker, the claimant.

She signed the agreement of 1836.

She also signed the agreement of 1847.

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(4) *Allan Shale and G. L. Shale:*

They claim through:

(*a*) Their great-grandmother, *Mary Shale*, who died at Harmony, in Butler county, Pennsylvania, and while the society was in Indiana, and therefore must have been prior to 1824.

It does not appear that Mary Shale ever signed any of the agreements of the society, nor is there any evidence to show that she ever was a member.

(*b*) Their grandfather, *Lawrence Shale*, who died in 1855. When he joined does not appear, but he seems to have signed the agreement of 1805, and he left the society between 1824 and 1826, and married.

G. L. Shale is the son of Lawrence Shale.

(*c*) *Jacob Shale*, who was the great uncle of the plaintiffs. He died in Economy in the year 1837.

He signed the agreement of 1827.

No one of the appellants was ever a member of the Harmony Society.

When the bill in equity was filed no one of the plaintiffs was or ever had been a member of the society, or in any way represented the interest of any member of the society. Their only claim was that, respectively, they were heirs at law or next of kin of some deceased member.

CONTRIBUTIONS OF PROPERTY.

No one of the appellants and no one of all their ancestors ever contributed any property whatever to the Harmony Society. Nothing whatever was thus contributed.

The master has so found, and, after argument, the court below so found.

It is in entire accord with all the evidence.

There is no proof that any of the deceased members, under whom plaintiffs claim, ever contributed any property to the society.

MASTER'S CONCLUSIONS ON PRECEDING QUESTIONS.

The master has summed up his findings on these questions in the following language (see record p.):

> "It thus appears:
>
> "1st. That *none of the plaintiffs were ever members of the society.*
>
> "2nd That all of those members of the society through whom Christian Schwartz claims as their heir signed the agreement of 1836 and 1847 and continued members until their death.
>
> "3d. That Anthony Koterba claims as heir of his father, Joseph Koterba, and his half brother, Andreas Koterba; that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards in 1827 withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.
>
> "4th. That the grandparents of David Strohaker, viz: Christian Strohaker and wife and Mathias Rief and wife, joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs. Rief, who died between 1830 and 1836. That his father, Christopher Strohaker, signed the agreement of 1827 and withdrew from the society in 1827. That his aunt, Catherina Strohaker, signed the agreement of 1827, 1836 and 1847, and continued a member of the society until her death.
>
> "5th. That Lawrence Schul and Jacob Schul, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence withdrew in 1824 or 1826; that Jacob Schul signed the agreement of 1827 and died a member, about 1837.

"5th. *That none of the parties through whom the plaintiffs claim contributed any money or property to the society.*"

These conclusions are confirmed by the Circuit Court and Circuit Court of Appeals, and *stand as the accepted and uncontroverted facts.*

PLAINTIFFS HAVE NO OTHER RIGHTS THAN AS THE DESCENDANTS OF NON-CONTRIBUTING ANCESTORS.

It seems perfectly obvious that no one of, or all of, these plaintiffs together can have a higher or greater (even if an equal, which we deny,) right to the property of the society than the respective ancestors through whom they claim.

(*a*) What, then, were the property rights of those ancestors?

(*b*) Did they survive a withdrawal from the society?

(*c*) Did they, on death, pass by descent to the heirs or next of kin, or to the personal representative of the decedent?

All of these questions may the more readily be considered together.

All depend upon the written contracts of the parties.

There is no other testimony of any kind in any way proving how, or upon what terms, or in what manner, the prop-

erty of the society is held, and what the rights or interests in that property of the members of the Harmony Society are, except the written contracts, commonly called the constitution.

Before any one could join the society he had to sign that constitution, and when he did sign it, it regulated, determined and controlled his rights of ownership and property rights in the property of the society.

Put in a little different light, the signing of the constitution was indispensable to membership in the society, and by the very act of signing the new member became a party to the written contracts, the provisions of which fixed his rights in and to the common property of the society.

The very agreement which assured him of membership in the society, and gave him whatever his rights of property were, also limited and determined the extent of those rights.

One of the reasons why the agreement of 1827 was made was, quoting its words,

> "that the conditions of membership should be clearly understood, and that the *rights* and *privileges* and *duties* of *every individual therein* should be so defined as prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

The agreement of 1847 provides that

> "New members when admitted shall subscribe this agreement as the evidence of their membership and of the rights acquired by and the duties imposed upon them,"

That agreement reaffirmed the agreements of 1827 and 1836.

THE SEVEN AGREEMENTS FORMING THE SOCIETY.

Turning now to the constitution, or written contracts of the Harmony Society, we find that they are seven in number:

That of 1805 at Harmony, Butler county, Pennsylvania.
That of 1821 at Posey county, Indiana.
That of 1827 at Economy, Beaver county, Pennsylvania.
That of 1836 at Economy, Beaver county, Pennsylvania.
That of 1847 at Economy, Beaver county, Pennsylvania.
That of 1890 at Economy, Beaver county, Pennsylvania.
That of 1892 at Economy, Beaver county, Pennsylvania.
A copy of each of these contracts is given in this brief.

All of the ancestors of the plaintiffs, who were members of the Harmony Society, executed one or more of these agreements, and as all of these agreements, in substance, contain substantially the same provisions so far as the property of the society and the rights of the members in reference thereto are concerned, it is unnecessary now to refer to the facts hereinbefore given as to what contract each ancestor signed. Each signed one or more, and so far as this case is concerned it is immaterial which, because, at least for this portion of the case, all are alike in substance.

AGREEMENT OF 1805 IN BUTLER COUNTY.

The first agreement made in 1805 is as follows:

> "Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:
>
> "ARTICLE 1. We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.
>
> "ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.
>
> "ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered; but whatever we jointly and severally shall or may do we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers, jointly and severally, with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15, 1805."

ANALYSIS OF THE AGREEMENT OF 1805.

Beginning with the agreement of 1805, we note it is between

> "the subscribers of the one part, and George Rapp and his associates (or society) of the other part."

The subscribers on their part,

> "and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and *property, consisting of cash, land and chattels, or whatever it may be*, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, *as a free gift or donation*, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, *to make free renunciation thereof, and to leave the same at the disposal of the superintendants of the community*, AS IF WE NEVER HAD NOR POSSESSED IT."

The language here is plain and precise:

For his part and his heirs and descendants, each subscriber does

> "deliver up, *renounce* and *remit* all our estate and property * * to George Rapp and his associates (or society), * * *as a free gift or donation for the benefit and use of the community* there, and *bind ourselves on our part*, as well as on the *part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents* of the community, *as if we never had nor possessed it.*"

The donor is bound, and he binds his heirs, to make free renunciation, so that for the future he will be as if he never had or possessed it.

Human language could hardly more clearly declare that each subscriber forever parted with any right to any property of the society—not alone that he himself contributed, but that which *any one or all of them contributed.*

The agreement is *joint.* It is

> "us the subscribers of the one part,"

and

> "George Rapp and his associates (society) of the other part."

It is

> "we the subscribers on our part * * deliver up, renounce and remit."

All of them *renounce, deliver up* and *remit* all their property to George Rapp and his associates (society),

> "as a free gift or donation."

All bind themselves to make

> "*free renunciation thereof,* and to leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

It, therefore, comprises all the property which each and all contributed to the society.

The grantees were

> "George Rapp and his associates."

Who these associates were the signed agreement would show. That the original is lost, and we do not now know them, does not affect it.

George Rapp is known and certain. The covenant with him is good.

Article Second is joint and several, and is an agreement to submit to the laws of the society and show obedience thereto, and work for the same.

The idea of work and accumulation of property was in this article. Taken in connection with Frederick Rapp as general agent, trade and gain and property accumulation was not foreign to but embodied in their agreements.

Article Third is:

> "If contrary to our expectation the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, *never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors, or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.*"

This is joint and several.

If any one

> "withdraw from the community *for whatever cause* it may be,"

the one so withdrawing is

> "*never to demand any reward*, either for ourselves or children, or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally (have done) shall or may do we will have all done *as a voluntary service for our brethren.*"

This, it is to be noticed, is not merely each one's own labor, but it is joint and several—*the labor of all and of each.*

Then follow the covenants and promises which George Rapp and his society makes to the subscribers.

> "In consideration whereof, George Rapp and his associates adopt the subscribers jointly and severally as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will

receive the same necessary instructions in church and school, which is needful and requisite for their temporal good and welfare as well as eternal felicity."

George Rapp and his society, in consideration of the covenants and promises of the subscribers, do—

> "adopt the subscribers as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare, as well as eternal felicity."

Here is a statement of the effect and consequences of an adoption, and what rights the adopted thereby acquires are specifically stated.

So far the adoption as members insures them and their families attendance at religious meetings, and necessary instructions in church and school, which is needful for their temporal good and eternal felicity, but nothing else.

Then follows:

Article II:

> "George Rapp and his associates (society) promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance, as long as they live or remain in the community as well in sick as healthful days, the same as before, or as circumstances or necessities may require."

These promises are:

To supply the subscribers with all the *necessaries of life*, as lodging, meat, drink, clothing, etc.

These shall be furnished not only during healthful days, but when one or more is sick or unable to work they shall have the same support and maintenance as if well.

If the father or mother of a family,

> "should die, or be otherwise departed from the community,"

and leave a family behind, they shall not be as widow or orphans,

> "but shall receive and partake of the same rights and maintenance *as long as they live and remain in* the community, as well in sick as healthful days, the same as they had before or as circumstances or necessity may require."

This assures support to the family so long as they remain in the community.

All these promises are either to the subscribers personally, or to their families, and are all personal and relate to their spiritual and material welfare while they remain members of the Harmony Society. No one of them extends *beyond* the actual membership in the Harmony Society. It is only while a member the promises are binding. Death, or departure from the society, terminates the liability of the promissor. Indeed, the promises are such that they could only be carried out during the continuance of the relation.

Only during such continuance could they attend religious meetings, and receive the necessary instructions in church and school, and be furnished with lodging, meat and drink.

Then comes *Article III*, which is in these words:

"And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates *promise to refund him or them*, the value of his or their property brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure."

This did not qualify the unqualified gift, under section 1, into a base fee, or limited trust. It did not impress with a trust the free gift or donation. It was merely a covenant to return without *interest* the value of the thing given—not its value increased with (70) years' work of others. The value of the property brought in only.

It is to cover the case of a withdrawal from the society and does not include death in the society.

This withdrawal, as also see preceding Section III., is recognized as a breach of contract by the one so withdrawing, for it says:

"should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave,"

then, and in that event,

"George Rapp and his society promise"

to do what?

(*a*) To refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sums may be, large or small.

(*b*) And if the departing brought nothing into the society, yet, if they depart openly and orderly he shall receive a donation in cash money, according to their conduct, or as circumstances and necessities may require, which George Rupp and his society shall determine at his departure.

This applies only to such as withdraw. It does not include the estates of those who died.

The promise is to refund, without interest, the value of the property put in, payable in installments.

If no property was put in, then, if they have behaved, and depart openly, each will receive a

"*donation in money * * which George Rapp and his society shall determine* at his or their departure."

It seems obvious—

(*a*) That the present bill in equity is not brought for a breach of this contract. There is no averment in the bill that on the withdrawal the society refused to perform its part of this contract.

(*b*) There is no evidence that any one of the withdrawing members, under whom the plaintiffs claim, ever contributed any money or property to the society.

(*c*) There is no averment that any one of the withdrawing members ever demanded a return of any property alleged to have been contributed.

(*d*) If it was such a case, the last withdrawal was over fifty years ago, and would be ruled out under the Henrici and Speidel case—cited *supra*.

On the contrary, the plain theory of this bill is that so long as the society was in existence, carrying out its purposes, no one of the plaintiffs had any enforceable claim whatever.

The claim they now set up arises solely and only because they say the society is *dissolved*, either by common consent or by reason of abandonment of its principles, and such dissolution happened after Duss became a member, in 1890. The trust denounced in paragraph 26 as ended is only ended because the society has been dissolved.

It would seem certain that under this agreement of 1805 death, or withdrawal from the society during life, terminated the connection, except as to a family left in the society, and all the rigbts of each in any way to any of the property of the society. If it did not, if the withdrawing member still had his interest in the common property of the society, why was anything paid to him?

If he only conveyed a base fee—if he had a reversionary interest—why pay him the value of his contribution?

Only as a member did any one directly, or indirectly, have any rights, of, in, to, or out of the society property. These rights, even as a member, were limited to the precise things shown in the agreement analyzed, and they were, attendance at religious services, schooling and maintenance, embodying lodging, food, clothes, etc.

No one could withdraw and, after his withdrawal, claim to participate in the worship, or have the food, lodging, etc.

The withdrawal was contrary to his covenant to labor for the society, and to show due and ready obedience to the superintendents and laws.

By his withdrawal he violated these.

Refusing to perform his covenants, he could not insist on performance by George Rapp and his associates of their covenants.

Being no longer a member of the Harmony Society, he could not have any so-called rights of property, or other rights, which, as a member, and solely because he was a member, he might insist on.

Withdrawal, or death, under the agreement, terminated all rights any member of the society had to any of its property, or to participate in any of its rights, or to receive support and maintenance from it.

If a family was left behind, then, as long as they lived, and remained in the community, they should be supported.

But this was the sole extent of the rights, even of the immediate family, and these rights continued only

> "as long as they live and remain in the community."

This agreement introduces no question of faith, or of peculiar religious belief. The society is not founded for the furtherance of any kind of religious belief or conduct. The contract is simply and solely a civil one, regulating the rights of the members. It contains nothing except the contractual relations between the individuals, and, also, between the indi-

viduals and George Rapp and his society. Its evident purpose would have been destroyed if members could have partition, or sell their rights, or impart them to strangers, or if these rights descended to heirs, for in a few years outsiders would be in control. The society was supreme. The individual was nothing, except as a part of the society.

AGREEMENT OF 1821, AT POSEY COUNTY, INDIANA.

Next comes the second agreement:

> "Be it hereby known that to-day, (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N., etc., of the one part, and George Rapp and his associates of the other part.
>
> "After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have, after long and mature reflection, out of their own free will, determined to join the community of George Rapp and his association, in Harmony, Posey county, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case

should happen that the aforesaid persons, jointly or singly, after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves, jointly and each for himself separately, never in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love, for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something.

"However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the necessary instructions, requisite and needful for their temporal benefit, and happiness, and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to wit: meat, drink and clothing, etc., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

"In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated."

ANALYSIS OF THE AGREEMENT OF 1821.

It differs from that of 1805 in that it is for new members of a society already formed and having for its government adopted rules and regulations. It, therefore, does not go into detail as did the agreement of 1805, but it did in substance contain the essential portions of that article.

(1) The members joining,

> "bind themselves and promise solemnly by these presents to comply with the ordinances, rules and regulations of the community and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labor to which they are ordered, and help to promote the benefit, happiness and prosperity of the community.

(2) If any one jointly, or singly,

> "leave the community for any cause whatever, they hereby bind themselves, jointly, and each for himself separately, never and in no case to bring any account nor make any claim either against the association or any individual member thereof for their labor and services rendered; also never to make any demand, ask or claim any other payment under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something."

(3) George Rapp and his association

> "in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the necessary in-

structions requisite and needful for their temporal benefit and happiness and eternal felicity."

(4) Rapp and his association also agree to supply them meat, drink and clothes, both during days of health and also of sickness,

> "they shall *as long as they remain members of the community* receive and enjoy the same support as before during their better days, or as their circumstances may require."

This agreement contains no provision whatever for the return of the value of any property contributed. It emphasizes especially two things:

(*a*)—The free and unconditional gift of property and labor to the association.

(*b*)—The absolute and unqualified renunciation of each and all of such property and labor. In its own words:

> " * * * *Never and in no case* to bring any account *nor make any claim* either against the association or any individual member thereof for their labor and services rendered ; also *never to make any demand, ask or claim any other payment under any name and description whatsoever.*"

AGREEMENT OF 1827, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

The third agreement is as follows:

"WHEREAS, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which, being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity;

"AND, WHEREAS, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other;

"THEREFORE, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver county, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp and his associates, as follows, to wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind our-

selves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause, to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their

families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason, should withdraw from the association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto severally, and each for himself, set their hands and seals on the ninth day of March in the year of our Lord one thousand eight hundred and twenty-seven."

ANALYSIS OF THE AGREEMENT OF 1827.

The agreement of March 9th, 1827, is substantially the same as that of 1805 except in its preface or recital as to what the community is and what its purposes are.

That recital asserts that

> "by the favor of Divine Providence, an association or community has been formed by George Rapp and many others."

That such a community is

> "upon the basis of Christian fellowship."

That "the principles" of such fellowship have been "faithfully derived from the sacred scriptures,"

and such principles

> (*a*) Include the government of the patriarchal age,
>
> (*b*) United to the community of property adopted in the days of the apostles,
>
> (*c*) Wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by
>
> (1) the exercise of those affections, and
>
> (2) the practice of those virtues,
>
> (3) which are essential to the happiness of man in time and throughout eternity.

This analysis would seem to show that "Christian fellowship" is that upon which the society is founded.

That the principles of such fellowship are derived from the sacred scriptures, and are,

(1) Government of the patriarchal age;

(3) Community of property as in the days of the apostles:

The single object of the society is

"to approximate * * to the fulfillment of the will of God."

The mode in which this is to be done is,

(1) By the exercise of those affections, and

(2) The practice of those virtues,

(3) Which are essential to the happiness of man in time and throughout eternity.

The definite and particular things which this preface designates are Christian fellowship and the government of the patriarchal age, as it is found in the Scriptures, and community of property, as in the apostles' days.

The object sought is the fulfillment of the will of God by the exercise of the virtues and affections which are essential to happiness here and hereafter.

What is community of goods?

An economic system which obliterates private property.—Webster. Nolsey on *Communism.*

The society or State is supreme; the individual, the child supported by it. What the exact rules of communism which the apostles had, and how far they absolutely extinguished individual ownership, is not known, and hence, the agreement does not leave the rights and privileges and duties of members to be extracted from this general language.

It goes on to state that for the

> "good order and well being of said association"

it is necessary that

> "the condition of membership should be *clearly* understood, and that the *rights*, and *privileges*, and *duties* of *every* individual therein should be so *defined* as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

Therefore, all of the individuals

> "do severally and distinctly, each for himself, covenant, grant and agree to, and with the said George Rapp and his associates as follows:"

In substance the "as follows" is the agreement of 1805, stated in more precise language.

The "as follows" comprises six (6) articles, which may be skimmed thus:

Article I:

We, for ourselves, heirs, executors and administrators, do hereby

> "give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * *

> *as a free gift or donation for the benefit and use of the said association or community.*"

Did these members suppose they were only conveying a part of their title, and holding back a part?

Each one when he signed affirmed community of goods, which, in itself, was a parting with private ownership.

The covenants are express and implied, both as to negation of private ownership, with a covenant for further assurance, if necessary,

> "to vest a perfect title to the same in the said association, and to place the said property at the *full disposal* of the superintendents."

Article II:

Covenants to faithfully submit to the laws and regulations of the community, to obey the superintendents, to promote the interests and welfare of the community

> "not only by the labor of our own hands, but also by that of our children or families, and others who now are or hereafter may be under our control."

Article III:

If we could not render faithful obedience, or for any cause withdraw from the society, in that case

> "we do *expressly* covenant and agree to and with the said George Rapp and his associates, that we *will never claim or demand*, either for ourselves, our children, or for any one belonging to us, *directly* or *indirectly*, any *compensation*, *wages* or *reward* whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families, jointly or severally, shall or may do, all *shall be held and considered as a voluntary service for our brethren.*"

Article IV:

In consideration of these preceding covenants, George Rapp and his society

> "adopt the undersigned, jointly and severally, as members of the said community, *whereby* each of them obtains,

(1) The privilege of attending every religious meeting, and,

(2) Receiving instruction in church and school for themselves and families,

> "as may be reasonably required both for their temporal good and for their eternal felicity."

Article V:

Rapp and his associates

> "further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

This is to cover their days of sickness. And, in addition, they shall have

> "such medicine, care and attendance and consolation as their situation may reasonably demand."

If a member, who is father or mother, die,

> "or be otherwise separated from the community, and leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, *so long as they remain in the association.*"

Article VI:

If any member for any reason withdraws from the association

> "then the said George Rapp and his associates agree to refund him or them *the value* of all such property, without interest, as he or they may have brought into the community, in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine."

If the party brought nothing in, yet, if he departs openly, he shall

> "receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require in the judgment of the superintendent of the association."

So far as the rights of the individual are concerned, this agreement of 1827 left them where that of 1805 did. No one had any individual specific right in, or claim to, any of the property of the Harmony Society. The sole right the individual had was as a member of the community, and that was a common joint right, several only in what the covenants of the agreement gave him. These were, attending religious meetings, instruction in church and school, clothing, food, etc., and general support. If he withdrew, and his family remained behind, so long as they remained they were to be supported. On withdrawing, the value, without interest, of the property contributed was to be repaid. If no property had been contributed, a donation in money to be fixed by the superintendent was to be given.

But the rights of the individual were all personal. They ended with his or her death or withdrawal. He never did

have any right to any of the property of the society, except as he was part of the society, and when he died or withdrew neither his heirs nor personal representatives had any right or claim to the same. It, in some sense, resembles a member of a church or village, who, so long as a member, enjoys the property of the church or village, but a soon as he leaves or dies this right, which was personal, ceases. Unlike a village, the number of whose inhabitants is uncertain, this society was fixed and definite in its membership, all evidenced by the written agreements signed by the members.

The property he brought into the society, and the work he did while in it, were the consideration for his support, maintenance, etc. They were declared to be a free gift by him to the society. Had it not been for Article VI he could not have claimed a return of the value, but that value was limited to cases where one withdrew, (not when he died in the society). Then, it was the value without interest. It was not the *identical thing* contributed, but the value, without interest, and such value was to be repaid in one, two and three years.

If one withdrew and demanded the return value, and the society refused to pay it, probably an action would lie; but it would be a personal action, and on his death, if it survived, would go to his personal representatives, *i. e.*, executors or administrators.

In no case had the individual member aught that descended to his heirs at law.

The withdrawal, or death, absolutely and finally severed the tie which bound the individual to the society, and terminated his right to demand the fulfillment of any covenants, or intermeddling in any way with any of the property of the

society. No matter what was done by the society after his death or withdrawal—no matter what disposition it made of the property of the society—no injury was done to the departed member. He was not wronged. He no longer was interested therein, and he could no more interfere than a perfect stranger.

The preface did put the society on the basis of Christian fellowship, and it fixed, as its guiding principles, the government of the Patriarchal Age and the community of goods.

I suppose that this government of the Patriarchal Age meant some one as the head of the family or tribe, which family or tribe would include the children, grandchildren and collaterals, but it seems hardly necessary to trace it out now, owing to the change made after Rapp's death by the Article of 1847.

See 3 *Wallace, Jr.*, 70.

The communism was specifically stated to be

> "the community of property adopted in the days of the apostles."

What was that?

The only references to it in the Holy Scriptures are in the Acts of the Apostles.

During the Pentecostal glory, when the apostles did many signs and wonders, fear came upon every soul, and in Acts, chapter 2, verses 44 and 45, it is recorded :

> "And all that believed were together and had all things common; and sold their possessions and goods, and parted them to all men, as every man had need."

In Chapter 4, after telling of the signs and wonders the apostles John and Peter did, it is said (verses 33, 34, 35) :

> " * * and great grace was upon them all. Neither was there any among them that lacked; for as many as were possessors of lands or houses sold them and brought the prices of those things that were sold, and laid them down at the apostles' feet, and distribution was made unto every man according as they had need."

Barnabas sold his land and gave in the money, but Ananias and Sapphira were stricken with death for keeping back part of the price they sold a "possession" for.

The community of goods the Harmony Society founded was more general and broader, but it was but a part of the agreement of 1827, which provided in the most specific manner to detach any individual right or claim of any one individual to the common property, and it emphasized what was already really implied, in the contract, that it depressed the individual and elevated the community.

But the broad phrase "community of goods" was, so far as the individual member was concerned, defined, and the rights of each was set on in plain unambiguous words, so that

> "the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

The community was everything. The individual nothing, except as he was protected by express covenants.

The single object of the community was (what, theoretically, all governments are for), that each should within its sphere approximate, as far as human imperfections will allow,

> "to the fulfillment of the will of God,"

by the

> "exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity."

To fulfill the will of God is every one's duty—indeed, in one sense, every one's destiny.

The affections and virtues, by the exercise of which the Harmony members were to effect this, are not enumerated.

Every state or society, large or small, in a Christian land, seeks in some way to fulfill a part of the will of God, and to do it in some appropriate, and by some efficient manner, and this agreement of 1827 in this respect differed from no other government or society, except that it specifically stated its *single object*, and prefaced it by agreeing that the best mode of accomplishing this result was government of the patriarchal age and community of goods.

AGREEMENT OF 1836, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

> "WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver county, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz.:
>
> "And if it would so happen, as above mentioned, that any of the undersigned should violate his or

their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual installments, as the said George Rapp and his associates shall determine.

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require, in the judgment of the superintendents of the association.

"AND, WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"AND, WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"AND, WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"NOW, THEREFORE, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2d. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisable stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be.

"3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.

"Signed and sealed in the presence of

"CHARLES D. VOLTZ,

"WILLIAM P. BAUM.

(Signed by 391 members.)

(Signed by plaintiff and others.)"

ANALYSIS OF THE AGREEMENT OF 1836.

The agreement of 1836 follows that of 1827. It repeals Article VI. of the agreement of 1827, and makes more emphatic—but I do not think any more certain—the proposition that the individual had no separate and specific property or rights in property of the society, but his rights were in common with all, and in their nature joint. His death or withdrawal cut him off from the society and all its property. It differs especially from all prior agreements in taking away the right of a return of value.

After reciting *in extenso* Article VI. of the agreement of 1827, it provided as follows:

> "*And whereas*, The provisions of the said 6th article, though assented to at the time, manifestly *depart* from the great principles of a *community of goods*, and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;
>
> "*And whereas*, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;
>
> "*And whereas*, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"*Now, therefore*, Be it known by these presents that the undersigned, with a view to *carry out fully the great principles of our union*, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said Sixth Article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then came

Article 2d:

"All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible stock*. Each individual is to be considered to *have finally and irrevocably parted* with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

To me, this does not add to what was contained in the agreement of 1827, except that it is stated in more specific words.

All the property of the society is declared to be

"joint and indivisible stock."

But this is what it was under the contracts of 1805, 1827. Community of goods necessarily implied it.

It, therefore, assumed a joint tenancy, which included the right of survivorship, and therefore forbade the idea of a division without unanimous consent.

See Kennedy's Appeal, 60 *Pa. St.*, 511.

The individual

"*finally* and *irrevocably* parted with all his * * contributions,

past or future or present.

He no longer had any right of property in any of the property he had handed in.

Then came

Article 3d:

> "Should any individual withdraw from the society or *depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account* of said contributions, whether in land, goods, money or labor, *or to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintedent to decide whether any, and if any, what, allowance shall be made to such member or his representatives as a donation."

What about a base fee, reversionary rights, limited trusts? Read Articles 2 and 3. Did they suppose when they said *finally and irrevocably parted* they did not mean it? But only meant they granted a limited estate? Turn back to Agreement of 1827.

Here, again, the idea involved in the Agreement of 1827 is more explicitly and plainly stated, but to my vision it is clearer than it was in the agreement of 1805 and 1827, only, because the language is bolder and more pronounced.

Each individual's connection with the society was personal. Membership was the life of the connection. Its dissolution by death or departure from the society ended the membership. This ended the personal connection, and hence, ended all the claims and rights in and to the society and any of its property.

This was in the Agreement of 1805 and 1827, and the Agreement of 1836 only stated it in more glaring words.

It reiterated, that, in case of death or withdrawal, there shall be no right on the part of any one

> "to demand an account of said contributions, whether in land, goods, money or labor,"

and then it added,

> "or to claim anything from the society as matter of right."

He was wholly cut off, and to the superintendent was left the decision of the question,

> "whether any, and if any what allowance shall be made to such member or his representatives as a donation."

AGREEMENT OF 1847, AT ECONOMY, BEAVER COUNTY, PENNSYLVANIA.

George Rapp's death, on August 7th, 1847, led to the preparation and execution of the new agreement, dated August 12th, 1847, which is as follows:

> "WHEREAS, By the decree of God, the venerable Patriarch and much-loved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs; and whereas, in consequence of this deeply afflicting dispensation it has become necessary, to the good order and well-being of the association, that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;
>
> "THEREFORE, Be it known to all whom it may concern, that we, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows: That is to say:
>
> "ARTICLE 1ST. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D., 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D., 1836, in the presence of Charles L. Voltz and William F. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.
>
> "ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine mem-

bers of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schuabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, Jacob Henrici, Johnathan Lentz shall be the first board.

"ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings they

shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2d. To make donations to seceding and excluded members and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3d. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in

their own names, as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely, and in consideration thereof, we grant and transfer to the said trustees all such title and interests in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

"ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee, now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned, members of the Harmony Society, who constitute the said association, have to these articles, executed in English and in German, hereunto set our hands and seals, at Economy, in Beaver county, this 12th day of August, A. D. 1847.

"Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

"Signed by W. P. Baum and others.

"Duly acknowledged. Recorded in Beaver county, Pa., Deed Book 25, page 121," etc.

ANALYSIS OF THE AGREEMENT OF 1847.

It recited Rapp's death, and averred it was necessary,

> "that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis."

Therefore,

> "* * * the surviving and remaining members of the Harmony Society, *and constituting the same*,"

do severally

> "covenant, grant and agree to and with all the others thereof,"

as follows:

Article 1st:

> "Recognize, re-establish and continue,"

the Articles of 1827, save Article VI, and that of 1836,

> "*except* so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Article 2nd:

> "We hereby ordain and establish a board of elders, which shall consist of nine members of the Harmony Society, and their successors to be chosen as hereinafter provided."

It will be noticed that the one qualification for an elder was that he or she should be a member of the Harmony Society. The sex of the elder was not inquired into, and there is nothing in the agreement of 1847 to prohibit a woman from filling the office.

Article 3rd:

> "The board of elders shall have and exercise the following powers, to-wit:
>
> "1st. To regulate and manage *exclusively* the *internal*, temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

Here is given to the board

> "the exclusive management of the internal, temporal concerns of the society."

Not of a portion, but of all of them. And the power is given to manage *exclusively*, not in conjunction with others, nor as others shall think best, but the power is absolutely lodged in the elders.

Then, they also have the power to appoint and remove superintendents in the several departments of industry, to make regulations and give orders as to the business operations of each, and generally to see that the members do what they are ordered to do.

It will be noticed that discretion was left with the elders as to whom they would appoint superintendents. They are not required to appoint members of the society, but are left in that respect to the exercise of their own judgment.

> "2d. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault, or found delinquent in his duty."

This established the elders as a court for the settlement of all disputes and misunderstandings amongst the members of the society.

> "3d. To admit new members into the society, and to expel them therefrom. *New members when admitted shall subscribe this agreement* as the evidence of their membership, *and of the* rights acquired by, and the duties imposed upon them."

The prerequisite to membership in the society was, as all the oral testimony in this case agrees, and it is, and ever has been, that the member joining shall

> "subscribe this agreement as the evidence of their membership."

There was no other evidence of membership than the signature to the agreement, and this was a *sine qua non* to membership.

Then this agreement not only evidenced the membership, but, in addition, stated,

> "the rights acquired by, and the duties imposed upon them."

Thus, the agreement of 1847, and the preceding agreements of 1805, 1827, and 1836, when examined, would specifically determine the rights of each member, and the duties of each member.

> "4th. To establish regulations for the maintenance and improvement of the morals of the society, and for the instruction of its members."
>
> "5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board.
>
> "6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office.

"7th. To fill all vacancies in the Board of Elders, occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors, shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur.

"8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board."

A further provision was for a book of record, which should be

"full and absolute evidence of the facts and proceedings therein contained,"

but such book does not seem to have been kept.

Article 4th:

"We do further ordain and establish a Board of Trustees for the *exclusive* management of the *external* business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors, who shall be appointed as hereinbefore provided."

EXTERNAL BUSINESS.

This Board of Trustees was for

> "the exclusive management of the *external* business and affairs of the society."

It was to consist of two persons, each of whom was to be a member of the Board of Elders.

What did they mean by *external* business? It was contrasted with internal. It was not, then, the shops in Economy, or the farm, or the dairy, or the home store.

It was *external*, and it was *external business*, external affairs.

What does that include? All kinds of business. *All kinds of affairs.*

It included all the traffic with the world and all the worldly business,—the oil, the coal, the lumber, the iron, the steel, the bank, the railroads, the purchase of real estate and laying it off in lots and selling the lots,—and all the multiform and extensive ramifications of the numerous business enterprises.

Article V:

> "The said trustees shall jointly and severally have and exercise the powers following:

Note that the power is joint and several. Not merely a joint, but also, equally several.

> "In their own names or that of *either of them, or otherwise*, to purchase and *sell*, deal, barter, exchange, and traffic, make all contracts and bargains

> in the prosecution of the business, to invest the funds in stocks, and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact, and at law, *and generally to transact all the external business affairs of the society.*"

It is now said their sole power was to invest funds as trustees usually do. This is but one of their powers.

Ratification and adoption by agreement of 1890. Read it.

The bill approved all of these until 1890, but now they are all void.

Couldn't make partnership. Why not?

The agreement expressly authorized the trustees

> "in their *own names, or* that of either of them, or otherwise"

to do what?

Merely invest trust money as an ordinary trustee, as the appellant now allege?

By no means.

But, also, to

> "purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities."

There is no limit whatever to

> "the business"

to be prosecuted.

In all respects the trustees might

> "sell, deal, barter, exchange and traffic."

And, in addition, the trustees are authorized

> "generally to transact all the external business affairs of the society."

Under these agreements, and, especially, since 1847, the trustees carried on and engaged in almost every conceivable business.

They were in the oil business; they were oil producers and oil refiners; they were in the business of the manufacture and sale of glass, of iron, of steel, of all kinds of hardware and cutlery and files, of cars, of woolen goods, of silk goods, of bicycles, of whiskey, of beer, of wine.

They laid off plan of and sold lots, and, really, built up Beaver Falls thereby.

They ran saw mills, great and small.

Were largely in the timber business and coal business.

They built railroads and were a large factor in the construction of the Pittsburgh & Lake Erie Railroad.

They organized a bank, and for years it was one of the largest in Western Pennsylvania.

They did business in their own names and the name of others. They had agents and partners.

They did all this prior to 1890, during which period the bill in this case says the society was perfectly conducted.

In 1890, all of the then members of the Harmony Society executed a new agreement, which recited and approved of the prior agreements, but, also, specifically approved of everything the trustees had done.

The agreement enacted as follows, (see Record, vol. 1, pp. 71, 72):

> "We do hereby approve and confirm any and all acts, matters and things done and transacted by the board of elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and

we hereby ratify and confirm the appointment of the present board of elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

"We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the *Board of Trustees of the Harmony Society*, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

Yet, with all this, it is now said that the only power the trustees had was to loan money!

There is no limitation which confines them solely to external business and external affairs transacted by themselves. All the *external business* was committed solely to them, and

also the mode of its transaction, whether separately or jointly with others.

They could then do this in the name of any other person, natural or artificial. There is no limitation put upon the business which the trustees may engage in, nor the manner in which, nor the extent to which, this shall be done. This is left to the discretion of the trustees, and they are given absolute, unlimited and supreme power,

> "to transact all the external business and affairs of the society."

The trustees, at any time, could change real into personal property, and personal property into real. They, therefore, could convey real estate, and accept in lieu thereof personal property, such as stock or money.

> "2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit."

The donations, it will be noticed, were to those withdrawing and the representatives of the dead, and for benevolent and charitable purposes. The size of such donations, and when, and to whom given, are left exclusively with the trustees.

> "3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

> "4th. This provides for the rights of possession, entry and action in reference to litigation connected with the society's property."

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

This last is a reiteration of the broad powers of the trustees and extends to all the property of the society, real, personal and mixed; and it is also an affirmation of the proposition that the property was not then necessarily held in the name of any one person, for the agreement says:

> "whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

Article 6th:

Declares that the entire property—real, personal and mixed—of the society

> "shall be *deemed the common property of said society*, and each trustee now or hereafter appointed hereby disclaims all *personal interest* in the present resources and future earnings of the society, *other than that of a member* thereof, according to the articles of association hereby re-established and continued; and according to the present agreement."

This again affirms that the community owns the property, and that the individual had no specific, separate, personal rights thereto, or thereunder. His personal rights were under the covenants made to him. His rights as a member of the society, as a part of the indivisible whole, were in common with all members, and were joint, and terminated and ceased—as did also his right to enforce the covenants—when he died or departed from the society.

His right was wholly and solely, and only an individual and personal right, which did not survive him, which he

could not sell or will, and of which he could not ask partition.

The agreement of 1847 did not alter the provision of the said contracts of 1805, 1827 and 1836 in reference to the rights, duties and interests of the individuals composing the Harmony Society; but it did change the government from the individual patriarch, who was the supreme ruler, to a government by and through a board of elders and board of trustees, who had the powers of a patriarch. Under the absolute patriarchal government the patriarch appointed his successor, as he this day does in some of the tribes in Asia and Europe.

The respective rights of the individuals who composed the Harmony Society were not enlarged, but so far as the property right is concerned, were practically left where they were, except that these rights were made subject to the governing powers of the board of elders and the board of trustees.

It is not necessary to further examine now the agreements of 1890, 1892 and 1894. Nothing in either of them changes any of the provisions of the former agreements. Each adopts, confirms and approves all said prior agreements.

CONCLUSIONS AS TO MEANING OF CONTRACTS.

In a broad, but perfectly correct way, these agreements may be defined as contracts between the joining member and all the others who then constituted the Harmony Society, and also contracts *inter sese.*

Each, on joining, gave up all—promised obedience and work in consideration that the society would feed, clothe, maintain and educate each for his or her life, and their families after them, so long as the joining member or his family continued in the society.

A breach of his covenant of obedience or of work—and especially his withdrawing from the society—rendered it impossible for him to insist upon the performance of the covenants by the society. These covenants were dependent. Only while he was a member and worked for it was he entitled to performance for his benefit.

The very nature of the covenants of the society made shows they were only personal to the joining member, and for his life, not for his heirs or remote descendants. They were:

(*a*) To adopt him as a member.

(*b*) *Whereby* (that is, because of his membership), he obtains the privilege of being present at every religious meeting, and of receiving instruction in church and school.

(*c*) The society is to supply him with the necessaries of life—clothing, meat, drink, lodging, for themselves and their families, and this includes their days of infirmity, when unable to labor.

(*d*) When sick, medicine, attendance and consolation.

(*e*) If die, and leave family, they shall be provided for,

"so long as they remain in the society."

(*f*) Return of value of contribution if withdrawn in the agreement of 1827 was abrogated by the agreement of 1836.

The gift, or donation, was absolute, it and the covenant of obedience and work was the consideration for the adoption as a member, the church and school privileges and the furnishing of meat, drink, lodgings, medicines, support of family and return of value on withdrawal (*but only on withdrawal*).

The contract, *inter sese*, was the affirmation of the general policy of the society, and its objects and purposes.

THOSE WHO COMPOSED THE SOCIETY AT ANY ONE TIME ALWAYS AND FROM 1805 DOWN TREATED ALL ITS PROPERTY AS BELONGING SOLELY TO THEMSELVES.

Attention should be called to a most significant construction, which the society itself put upon the power of its members at any time, and that was, that the persons who at the time constituted the members could make such new contracts as they saw fit, and this without any reference to the heirs of those who were dead, or to those who had left. This right was constantly asserted from 1805. It was done in 1805,

1821, 1832, 1836, 1847, 1890. It was in the most pronounced manner the assertion of the right of the community as it existed at the different times to add to, alter and change the written contracts.

In 1827 it added to the contract of 1805 the Patriarchal Government and Communism.

In 1832 dissensions arose in the society, which then consisted of 257 persons. Count de Leon led one side and George Rapp the other. The result was that Count de Leon and his followers, in all 176 persons, withdrew and took as their share of the common funds of the society one hundred and five thousand dollars ($105,000), and in addition sixty thousand francs (60,000), and released to

> "George Rapp and his associates * * * all their right, title, interest and claim in law or equity in and to all the estate, real, personal and mixed, *belonging* to the society of George Rapp and his associates or vested in any person or persons in trust for them."

Here was in 1832 a distribution of all the society's property among the then existing members. De Leon and his party took about $117,000, and Rapp and his party the balance.

There was no consideration for those members who had left or died in the society.

The then membership constituted the society and were the sole owners of all of its property.

In 1836 the *then* members, without thought of those who had left or were dead, struck out Article VI. of the agreement of 1827, and thus radically changed the provisions as to the return of the value of property to withdrawing members.

In 1847 the then members organized a new mode of government. It substituted a Board of Elders and Trustees instead of the patriarch and general agent, and gave them the patriarch's power. No member denied the right. No heir of any dead member questioned the right.

In 1890, after eighty-five (85) years of the existence of the society, and more than fifty years after the last agreement in 1847, the *then* members recite the facts as to the agreements of the society and the action of its Board of Elders and Trustees, and confirm and approve the same.

In 1892 the then members made a supplemental agreement affirming that of 1847 and giving broader powers to the Board of Trustees, and defining that the sole proof of membership in the society shall be the book containing the roll of membership and signatures therein.

Then, too, the whole existence of the society outside of its written agreements is full of facts which prove the constant reiteration and assertion that those at any one time—in 1805, 1821, 1827, 1832, 1836, 1847, 1870, 1892, or at any intermediate time—composing the live membership—*were the* society; owned all its property; could sell or give it away; change the rules for the government of the society; refuse any longer to refund the value of property contributed by withdrawing members; change the business of the society; change its place of abode—from Butler, Pennsylvania, to Posey county, Indiana—from there to Beaver county, Pennsylvania; take in as many or as few as those at the time constituting the society deemed wise, sell all its real estate, as was done in Butler county, Pennsylvania; and buy new real estate in Indiana; again sell the Indiana real estate and buy new real estate in Beaver county, Pennsylvania; turn per-

sonalty into realty, or realty into personalty; at one time run a brewery, making beer, and a distillery making whiskey; and again build railroads or engage in the oil business, coal business, steel business, iron business, and nearly every kind of business the ingenuity of man in Western Pennsylvania had devised; and in each one of these different occupations necessarily risk the assets of the society to a greater or less extent, if the same proved unsuccessful. They gave away vast sums of money; they actually divided the property in 1832. In all ways they repeatedly and always asserted that the members at any one time were the society, the owners of all its wealth.

In the agreements of 1805, 1821, 1827 and 1836, there is constant recognition that the *then living members* DID constitute the society and owned all its assets, and as we have seen, this was especially so in the agreement of 1836 which struck down and completely obliterated the before prominent doctrine of the reimbursement of the value of property contributed when one withdrew. This very reimbursement was an added assertion to the reiterations in the Articles, that those living and *then* members were *the* society, for if, where one withdrew, he still had a property interest in the joint property of the society, why pay him the value of his contribution?

But this quiet assertion in all the articles was specifically stated in the agreement of 1847 in plain language. Not stated as a matter for dispute or controversy, but of an admitted and generally recognized fact that the then living members *did* constitute the society. Its language is:

> "Be it known to all whom it may concern that we, the undersigned, surviving and remaining members

of the Harmony Society, and CONSTITUTING THE SAME, do severally, etc., etc."

Nothing is said here of deceased or withdrawn members, or their heirs or legal representatives. No one of all those deceased or withdrawn members ever questioned, by themselves or their heirs, this assertion.

RULES OF CONSTRUCTION.

This asserted and exercised right was practical and continuous; it was a construction of the then existing articles of agreement, and the assertion of the right of the surviving members, as a community, to all the property of the society, and to govern it as they saw fit, and that the individual member who died or withdrew cut himself off from and terminated all his rights to the society or its property.

There is no surer way to ascertain the meaning of a contract, and the rights of parties under it, than to see what the parties have done in carrying it out.

Its practical interpretation

"is entitled to great, if not controlling, influence."

Topliff vs. Topliff, 122 *U. S.*, 131.
Merriam vs. U. S., 107 *U. S.*, 437.
District of Columbia vs. Gallaher, 124 *U. S.*, 505.
Lehigh Coal Co. vs. Harlan, 27 *Pa.*, 439.

Applying such a rule, can there be a doubt that from 1805 down to the filing of this bill in 1894 everybody agreed that the living members at any given time *did* constitute the society and own all its property.

BILL SEEKS DISTRIBUTION OF SOCIETY'S PROPERTY.

What the present bill in equity seeks to accomplish through the remedies by injunction, receiver, and a decree for an account—see seventh prayer of the bill—is shown in that prayer, which is as follows:

> "That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty."

The plaintiffs each want in severalty a share of all the property of the Harmony Society.

What does that property consist of?

As per Mr. Dickson's statement, certain real and personal estate, subject to certain debts.

When did the society become the owner of such property?

There is no specific answer to this save that *all* of it was purchased or earned after the society located at Economy, in Beaver county, which was in 1824.

APPELLANTS HAVE NO RIGHT TO ANY PART OF THE SOCIETY'S PROPERTY.

The real estate at Economy is its oldest acquisition, and the Leetsdale property and all the personal property was acquired in later years.

It is certain that most of it was acquired in external business or in profits from it.

It is also certain that no one of the members could possibly identify the property any ancestor put into the society.

What possible claim, in law or equity, can either one of these ancestors have to the property the Harmony Society owns in 1896?

Those who left did so over seventy (70) years ago. How is it possible to now put life in such a claim?

If the theory of the plaintiffs be correct, that all the descendants of all persons who ever were members of the Harmony Society may, at any distance of time, after the death or withdrawal of the ancestor, demand an account of, and share in, the property of the Harmony Society, see what it leads to.

Mr. Duss showed that there have been 1,050 members of the Harmony Society.

Our opponents more than double this number.

The descendants, lineal and collateral, of all these are, under the plaintiffs' theory, entitled to a share in the property, and if they are so entitled they would seem to be necessary parties to this bill.

There would be several thousands of such persons, and even if the society had millions, the share of each would be a trifle.

If it were true that the member who withdrew still held his rights in and to the community and its property, and when he, or those still in the society, died, the heirs at law of each could assert them, how would you define such rights? What were they? Could the heirs force themselves into the society and demand support? Could the heirs at any time insist on a partition of the property? Could they demand an account, and, if refused, force a settlement? Could the one who withdrew do so? Could the heirs of one who died in the society do so? Have all the heirs and descendants of all the dead members of the society a property right in its assets? A right entitling them to interfere in its management?

If so, how futile these written agreements were, and what a weak, instead of a strong, sturdy society the Economites were!

Surely these written agreements never meant that such a result should follow from the practical workings of the society. It would be to give to such decedents, for seventy years after their death, a share in the work and labor of hundreds of persons.

What part of any one of these articles shows even a leaning toward such a result?

What decision is there, what principle of law, which would even squint at it?

Nor could it matter when the question is raised. If the heirs of the member who died in 1827, or '834, or 1888, can come in and share in the distribution of the property of the society *after* its dissolution, it must be because the dead man left his heirs a property right at his death, and this property right has all along existed and comes into fruition only when the society is wound up. Now, if this be true, what kind of a property right is it? It is not an estate in possession. Even the appellants do not claim that. They admit they must wait until the society is dissolved. It can't be in reversion or remainder, as we have seen and will see. All the agreements especially bar the dead man up until the moment of his death from so claiming, and he couldn't leave to his heirs an estate he never himself had. It can't be a resulting trust, because the agreements equally bar that, as we have read. So we see how shadowy and uncertain, and, indeed, unwarrantable, this alleged property right is and how incapable it is of definition.

What word is there in any one of the written agreements of the society which could possibly be construed to sanction such an extraordinary claim as the appellants assert? As the Shales, plaintiffs, claim because their ancestors died in the society about 1830, *therefore* in 1892, if the society attempts to distribute its present assets among its members, the Shale descendants may claim.

As bold as this proposition seems it is the legitimate result of going outside of the agreements and allowing, contrary to their express words, the heirs of dead members a property right. If one has it, why not all?

MEMBERS OF SOCIETY AT ANY TIME MAY DISTRIBUTE ITS PROPERTY AMONG THEMSELVES.

Of all things these articles do seem particularly and carefully to accomplish it is that the Harmony Society at all times is composed solely and only of its *then* members—not of those, and also, all the descendants of its dead and withdrawn members, but of its present actual members.

In the case of its dissolution how would the assets be distributed? There are now few members of the society. In all there have been at least 1050 members. Into how many shares would the property be divided? Judge Greer, in the Nachtrieb case, held, among only the present live members.

It is the society, as a society, which owns its property. It is the entire body as one whole. If at any time the society did dissolve, its property would go to the persons who then were its members. No one else has any legal or equitable claim to it except those members. To them, and to them alone, it would belong, and among them it would be divided.

The society proved this very thing by the division of its assets it made with Count de Leon in 1832. It could not then have done that if the heirs of all deceased members were entitled to share.

The decisions of this court and other courts of last resort are unanimous in holding just as we here claim.

The living members in the society at any one time compose it.

The different agreements speak of the society as

"George Rapp and his associates."

The joining member surrenders and conveys his property to and makes his covenant with

"George Rapp and his associates."

He is adopted and taken into the community by

"George Rapp and his associates,"

and all the covenants are from them to him.

Now *his* covenants are his own individual undertakings. He does by express works exclude any idea that his heirs or legal representatives can at any time claim through him against the society, either for property conveyed to it or for labor done, and *his* undertakings are personal to himself. He gives to the society (a) all his property; (b) agrees to submit to all the society's laws and to work and labor for it. He receives from George Rapp and his associates covenants personal to himself that they (a) adopt him as a member of the society, thereby each obtains the privilege of being present at religious meetings and of receiving instructions for each and his family; (b) will supply him with all the necessaries of life, clothing, meat, drink, lodging, etc., during health and sickness; (c) if one dies his family shall be provided for,

"so long as they remain in the association."

Each agreement recognizes on its face that any one member may at any time leave the society, and the consequences of

so leaving are fully provided for. The duration of his connection with it lies solely with himself, for he cannot be expelled so long as he complies with his covenants.

Now, suppose any one member would claim that the society had failed to keep its covenants with him, and brought suit, *whom would he sue?*

Evidently the members *then* composing the society. He could not sue the personal representatives or heirs of those who had left and died, or who had died in the society, because, on the face of the agreement, each might at any time leave, and his covenant as one of George Rapp's associates was only *as an associate* and bound him no longer than he was one. How could his heirs or legal representatives be asked to perform the society's agreement to feed and clothe and give each the benefit of church and school? The covenant the departing member made was but as one of the society with the words writ large in the agreement that he might at any time sever his connection with it.

Under the agreement of 1847, the society appointed two trustees to conduct its external business, and to these it gave the power to trade in all its branches, and, of course, thereby incur responsibilities. Now *A*, a member, leaves the society, say in 1850, and dies. The trustees incur indebtedness long *after* he leaves, say in 1870. Is *A* liable for that debt? Could the creditor sue and recover judgment against his personal representatives or heirs?

The answer seems plain that he could not, for *A* was not, in 1870, a member of the society, nor were his heirs, executors or administrators.

It is the persons at the time making up the membership who constitute the society, not these and the heirs of all the dead, but the present live members only.

DURATION OF SOCIETY.

No one of the agreements contains any provisions regulating the duration of life of the society. Nothing is said as to how long it shall exist.

It seems, therefore, plain that if at any one time all its members agreed to a dissolution, that would be the end of it. It exists merely because of the co-operation of its living members. When once all these members agreed not any longer to co-operate and not any longer to carry on the society, it, of necessity, would terminate.

This court, in Goesele vs. Bimeler, 14 *Howard*, 590, examined and construed a similar agreement of the Zoar Society, located in Ohio, and decided, among other things, that,

> "they provide for the continuance of the society for an indefinite period of time, in the *exercise of the discretion of the members.* The majority of the members may require a sale of the property and break up the association. In fact, the majority governs by the election of its officers. Members may be expelled from the society and new ones admitted under established rules. Whilst the society has the means of perpetuating its existence it may

be said to depend for its continuance on the will of a majority of its members."

The appellants do not pretend that the heirs of deceased members have any voice in the question of its end. They admit that so long as the society exists none of the heirs of deceased members can claim any of its property. Thus they leave to the living members the question of the length of its existence.

LIVING MEMBERS ABSOLUTE CONTROL OF PROPERTY.

The living members may, and, in fact, do, have all the property so long as they stand together as the society. They can sell the property, make donations of it for charity or to withdrawing members, may use it for their own support, may risk it in business, may thus wholly dispose of it and no heirs of any decedent could lawfully complain.

In this use they continually exercise the highest powers of ownership, for they dispose of the property so as to render it impossible, after the dissolution, for the heirs of decedents to regain it. When they donate to charities, when they use for their own support, they most effectually destroy, so that the heirs of decedent may not and cannot follow it, and the extent of this use and these donations rests, under the articles, *wholly* with the live members.

Now all the rights of each member, be he living or dead, are through and by means of these written agreements. Only through and by means of these agreements has he any

rights whatever. If, then, the heirs of the deceased members have any right to the property it must be because of some provision in these articles. They admit that they have none so long as the society is in existence. Where is the clause, then, that gives them the right when the society ceases to exist? All these articles we have printed and analyzed and will refer to them again, and one thing in them all seems plain, that the contract of the society was personal to the member, and when, by the very words of the articles, the member died or left, he thereby totally terminated all his claims upon the society and to its property. No one of the articles in the remotest degree hints at the heirs of the dead man having an estate in the property of the society. If such an estate so nebulous as to defy definition or classification does exist, it is contrary to the plain language of the only claim of title it could have, *i. e.*, the written agreements of the ancestor.

NO INJUSTICE IS DONE THE DEAD OR DEPARTING MEMBER OR HIS HEIRS.

The written agreement which he made demonstrates this. In that of 1827 all the then members asserted, and all subsequently joining agreed that:

> "And, whereas, it is necessary to the good order and well being of said association that the condition of membership should be clearly understood, and that the *rights and privileges* and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other."

Therefore, the written agreement was made. To Rapp and his associates each member gave his property, and in addition agreed to submit to the regulations of the society, to obey the superintendents and to promote the welfare of the society by the labor of his hands.

In consideration whereof, Rapp and his associates agreed to and did adopt each as a member of the community;

> "Whereby each of them obtains the privileges of being present at every religious meeting, and of receiving not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity."

And, in addition, Rapp and his associates agree to supply each

> "with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

And this shall be when sick as well as when well.

But, so the agreement further reads, if one should

> "violate his or her agreement and would or could not submit to the law and regulations of the church,"

and for this or any other cause withdraw, then he shall, under no circumstances, claim or be entitled to anything, either for work and labor done or even the value of his property contributed, as see the agreement of 1836.

Here, then, one gives up his labor and his property, in consideration of which Rapp and his associates agree he shall attend all religious services and school, and be fed and clothed

and looked after in sickness and in health, and when one dies his family shall also be cared for,

"so long as they remain in the association."

His life measures the duration of the period when he can eat or drink or attend church or needs clothes or medicines, and *only when*, and as long as he continues a member of the society, do Rapp and his associates promise to, *or*, *indeed*, *could*, attend to his personal and spiritual wants.

When we look abroad and see the misery and want in so many human lives, see the small percentage who accumulate and the large percentage which fails, is it to be wondered at that many a man and woman willingly agree to give the little each has and work with his and her hands for the assurance during all their lives of *plenty*—not alone for each, but for their families?

When one leaves the society or dies in the society, has not the society fully kept its part of the agreement, if it has so provided for the dead one during all his life the food, clothes, etc.? and if so, how is he or how are his heirs injured or treated unfairly by being shown these written agreements and told death or departure ended this member's ability to longer keep his covenants to labor, etc.; we have fully kept our covenants, and you have no possible claims on us or on our property; and so your ancestor agreed in writing.

This is proven:

(1)—By the express words of the agreements; reiterated over and over again by those of 1805, 1821, 1827, 1836, and subsequently.

(2)—By the inevitable and necessary inferences from all the agreements taken together, and the scope and limit of the purpose thereof.

(3)—By the settled practice and thus construction of these agreements during all the society's life.

EFFECT OF ABSENCE OF EXPRESS PROVISION FOR DISTRIBUTION.

If it be argued that the agreements contain no provision for the distribution of the property of the society on its dissolution, the answer is threefold:

(1) How does that help the plaintiffs? Of themselves they have no merit. Their claim is the merits of their ancestors. But these ancestors put in black and white just what their rights in and toward the society and its property were and bound themselves by express words, for themselves and their heirs, never to claim any other; *never* to do it. They did not qualify nor limit this to the existence of the society. They made it broad and unqualified and included the existence and the possible dissolution of the society. They expressly included their heirs and covenanted against them, as we have seen.

The agreement of 1827 provides:

> "We, the undersigned, for ourselves, *our heirs*, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and their heirs and assigns, all

> our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, moneys or debts due to us jointly or severally in *possession* or in *remainder* or in *reversion* or in expectancy, whatsoever or wheresoever, without evasion or qualification or reserve, as a *free gift* or *donation* for the benefit and use of the said association or community; and we do hereby bind ourselves, *our heirs, executors and administrators* to all such other acts as may be necessary to vest a *perfect* title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then follows as to labor:

> "that we will never claim or demand, either for ourselves, *our children* or *for any one belonging to us, directly* or *indirectly*, any compensation, wages or reward whatever for our or their labor or services rendered to said community or to any member thereof."

The agreement of 1836 provides:

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.
>
> "Should any individual *withdraw* from the society *or depart this life*, neither he in the one case, nor his *representative* in the other, shall be entitled *to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right.*"

The heirs of all the decedents are thus barred by plain words.

(2) As we have seen, the duration of the society is by the articles left to the live members of the society; at any time, by unanimous consent, they may dissolve.

Before dissolution, they plainly may squander or give away or lose in trade, all the property.

If they are such absolute owners of it then, what change does the dissolution, which they are the only people who can decree, work so as to take from them what before they undeniably had? What article so provides? What reason so dictates?

Why if they constitute the society, and the society owns all the property, will it not go to the persons composing it, and why is not this as certainly left to the members at any one time composing the society, as the power of dissolution itself?

It would be an arbitrary distinction to say that *before* the dissolution they could safely divide, but not afterwards. But before the dissolution they all along and continuously did divide among themselves. For many years under Henrici and Lentz the income of the society was insufficient for the support of its members, and the members used the corpus to live on. Why could not they do this now? For many years under Henrici and Lentz the society lost vast sums of money in the file and cutlery works and in the bank. Large sums were from time to time given away to departing members and outside charities. Are not all these the absolute proofs of ownership; and if they, who at any one time alive compose the society, and can so dispose of its assets as we have seen, why may they not agree to divide among themselves? Who is hurt? Who has a right to complain? Certainly not, under the articles, the heirs of deceased members.

(3) As we have seen, in 1821, 1827, 1836, 1847, 1890, 1892, 1894, the then living members of the society adopted new articles and changed the old ones to suit themselves; they

may, it is admitted, terminate the society. If they have such powers, why may they not, by unanimous consent, add to the articles of provision that the society be dissolved on a certain date, and its then assets divided among its then members? It would only be doing what was done in a large way with Count de Leon in 1832, and only in continuance of the assertions theretofore constantly made of the right, at any time, of its then members to change its agreements. We see no necessity for such new article. The old ones, especially as interpreted by the acts of all its members for over fifty years, are all full to the effect that,

(*a*) The society, at any one time, is composed of its live members, *and only its live members.*

(*b*) Such members have the entire regulation of the society and its property, and can, if they unanimously agree, terminate the existence of the society and distribute its assets.

(*c*) That the withdrawal from the society of a member, or that member's death, is the end of all his connection with the society and terminates all his right to any of its property. His heirs can have no higher right than that of their ancestor.

(*d*) Of necessity, and by a process of elimination, in entire accord with the words of the agreements and the continual construction of them for over eighty years, the living members at the time of dissolution own the property.

JOINT AND INDIVISIBLE STOCK.

The answers to the contention that one of the clauses of the agreement of 1836 forbids this, are several:

That clause is:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisible stock."

(1) That is, as the four corners of the agreement plainly show, so long as the society exists. When it terminates, the property can no longer be joint and indivisible. The very foundation of the bill is that it has then become divisible and they are entitled to a share of it.

(2) The live members of the society at any one time could change that provision. If they decided to dissolve and distribute the property that would be of itself the change of that provision.

(3) *Joint and Indivisible Stock.*

It was undoubtedly joint, that is, the society's property; which society was composed of individual members. Being joint it necessarily included the idea of survivorship. It was indivisible, without unanimous consent—but with it divisible.

ANSWER TO QUESTION.

We are now ready to answer the question, ante page.

Is either one of the plaintiffs a part owner in the property, real or personal, of the Harmony Society?

The answer—*he is not.*

No one of the plaintiffs *is* a member of the Harmony Society?

No one of the plaintiffs ever was a member of the Harmony Society.

No one of the plaintiffs is the executor or administrator of any deceased member of the society?

No one of the plaintiffs could obtain a decree compelling the society to admit him as a member to the enjoyment of the rights of the deceased ancestor.

The claim of each plaintiff is because he is of lineal or collateral descent the heir at law, or next of kin, of some one now dead, who, in his lifetime, was a member.

We have demonstrated—

(1) That no one of the members, even while the membership continued, had any title to any part of the property of the community. He had no such individual interest in or right to any of the property as enabled him to sell it, or transfer it to another, or take it to himself, or have partition of it. His entire right was solely and only as a member of the community, and was personal to himself.

(2) His withdrawal or death terminated all his rights as a member of the community, and hence ended all right on his part in any way to intermeddle with the property of the community.

This was distinctly ruled in Schriber vs. Rapp, 5 W*atts*, 358, and it will be noted that case arose prior to the agreement of 1836, and was ruled on the contracts of 1805 and 1827.

(3) Prior to the agreement of 1836, when one who had contributed property to the joint or common fund withdrew from the society, he was entitled to the value of his contribution, without interest, payable in one, two or three years. This was a personal right to be enforced by him individually, and after his death by his executors or administrators—not by his heirs at law or next of kin.

No question on the right to recover any contribution arises in this case. There is no proof of such contribution by any of the ancestors of plaintiffs, and if there had been this bill is not founded on any such right, and if it was so founded the personal representatives, *i. e.*, executor or administrator, would be an indispensable party.

This bill is filed on the ground that the Harmony Society is now dissolved.

Not that it is in existence, and may be sued, but that it has been dissolved.

The agreement of 1827, as to a return of value of contributions, is from the society living and in existence to a withdrawn member.

It is not this case which asks for a distribution of property because of dissolution of society.

(4) Under the agreement of 1836 the property of the society was declared to be

"joint and indivisible stock."

That is, it was joint which gave the survivors the rights of all, and it was indivisible, because no one of all had the power to divide it.

This was a definition in accurate language of what the agreement of 1805 and 1827 provided.

One and all denied to the individual a separate property right in any of the property of the society, and each limited the individual to his joint right to the common property with all the other members constituting the society, and recognized his individual right only in the covenants and agreements which provided him school and church and food, clothes, etc.

In one and all of them withdrawal, or death, terminated the membership, and left the departing one with no further interest in, or right in, the society, or its property.

The agreements all contain mutually dependent covenants. The joining member is to render obedience and labor, etc., and the society is to find clothes, etc. Evidently, if the mem-

ber will not perform his covenant, he cannot ask the society to perform its covenants. And then his continued presence in the society is necessary to enable the society to feed, clothe, and house him. When he dies or withdraws it is no longer possible to do it.

The member's interest in the property was only as one of the joint community, and not as an individual. In the property he had no direct interest. By the agrement he expressly renounces all such interest. His sole claim to the property is because he was adopted a member of the society. When he ceases to be a member, whether by death or withdrawal, the right which arose wholly by reason of the membership terminates and ceases, much in the same manner as if he was a citizen of a village, or a member of a church, and left the same.

Death, or withdrawal from the society, forever terminated and ended all the so-called property rights of the adopted one, and all his rights to call for the performance of the covenants in the agreements to give him food, clothing, sustentation, etc.

It will be noticed that all of the ancestors of the plaintiffs, either

(1) Died while still members of the Harmony Society; or,

(2) Died after they withdrew from membership.

Now, the withdrawing was a voluntary act on their part, which cut them off from the society. One who died after he had withdrawn, and was still *in contumacium*, surely could impart no more right or title or claim to the company's property than if he had remained in the society, and had not withdrawn. If he could, the parable is outdone, for the slothful servant in that received only an equal sum with him who had labored all the day, while in the case suggested he would receive much more.

Death, whether while still a member, or after withdrawal, forever settled the personal, individual claim and right of the deceased as a member of the society, and he has nothing—he leaves nothing he can transmit to his heirs.

In each of the agreements the language is more or less specific, but always clearly stating the same idea—that an individual had no personal right or claim which he could sell or give away, or, in the case of his death, transmit to any other person, as to any of the covenants of the agreement, or any of the rights which, as a member of the society, he had in or to the common property of the society.

Thus, in the agreement of 1805, all jointly, not only on their own part, but,

> "on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, * * to George Rapp and his associates, * * as a free gift or donation, for the benefit and use of the community, and bind ourselves on our part, as well

> as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it."

Then, again, in case of withdrawal, all agreed—

> "never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary sevice for our brethren."

Then, again, in case of a withdrawal, George Rapp and his associates

> "promise to refund him or them the value of his or their property brought in without interest,"

in installments, or, if nothing was brought in, and he departs openly, a donation shall be given.

The refunding, or donation, is only in case of voluntary withdrawal, and then the amount refunded is the value of the original contribution, without interest. This is the individual contribution that the party withdrawing had made. He is given nothing out of the common fund contributed by others. He is refunded only the value of that which he originally put in. As we have seen, it was a personal claim, to be enforced by personal action, which, on his death, would go to his executors or administrators, and would not descend to heirs at law. He might, under that agreement, sue the covenantors—Rapp and his associates—if they did not refund the value. This was his only right. He could not have filed a bill for the dissolution of the society and the partition of its property.

The agreement of 1827 made a joint and several covenant as follows:

> "We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * * without evasion or qualification, or reserve, as a free gift or donation, for the benefit or use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then, in case of withdrawal, each and all covenant,

> "that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren."

Then Rapp and his associates again agree, in case of withdrawal,

> "to refund to him or them the value of such property, without interest, as he or they may have brought into the community,"

payable in installments.

The agreement of 1836 reiterates and approves of the agreements of 1805 and 1827, except that portion of the agreement of 1805 and 1827 which promises to refund to withdrawing members the value of the property contributed. That portion of the agreement of 1827 was rescinded; the members

of the society, among other things in this agreement of 1836, saying:

> "The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then follows a formal declaration in specific words of what was already in truth contained in the two previous agreements, such declaration being as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."
>
> "Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representatives, as a donation."

The agreement of 1847 approves the agreement of 1827, excepting section 6th, and also the agreement of 1836.

If plain words, carefully selected and properly placed, can make certain any one thing, it would seem that these agreements made certain the proposition that death, or withdrawal, terminated and forever ended all the rights of the withdrawing or dead member, and as all these rights were personal, nothing could go to his heirs at law.

The authorities seem to be uniform in approving the above proposition, and this in whatever state and by whatever court the matter has been considered.

OPINION OF THE CIRCUIT COURT.

While Judge Acheson, in his opinion, did decline to take up and pass upon the question of law as to *base* fee, perpetuity, etc., he, at the same time, in the body of his opinion, passed upon and approved of the conclusions hereinbefore stated as to the proper construction of the agreements—the utter want of title on the part of each one of the appellants to any portion of the society's property, and the fact that, under the agreements, on the departure or death of a member neither the departing member or the heirs or personal representatives of the dead member had any claim of any kind upon the society or to its property.

In his opinion the Judge said: (93 *Federal Rep.*, 529; see Record, 193 to 195.)

> "The constitution of the Harmony Society is embodied, and the general purposes of the association are set forth in a series of written agreements executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805 the doctrine of community of property became, and by the subsequent agreements continued to be a fundamental principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society individual ownership of property is renounced in favor of the community or

society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return each is bound to render labor and obedience. The agreement of 1827 contained a provision that, if any member withdrew from the society, there should be refunded to him the value, without interest, of all property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly, and stipulated that if any individual shall withdraw from the society, or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right, but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representatives, as a donation. In view of the decision of the Supreme Court of Pennsylvania in Schriber vs. Rapp, 5 *Watts*, 351, and the decisions of the Supreme Court of the United States in Goesele vs. Bimeler, 14 *Howard*, 598, and Baker vs. Nachtrieb, 18 *Howard*, 126, it is clear that *the above-recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim, enforceable against the society or its property, passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.* Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such contribution was ever made by any of these persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim, who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons, so withdrawing, had any legal demands against the society, those demands have been barred by lapse of time.

Spiedel vs. Henrici, 120 *U. S.*, 377; 7 *Sup. Ct.*, 610. *The other persons through whom the plaintiffs claimed remained with the society and died in fellowship. They thus received and enjoyed all the benefits secured to them by the recited articles of agreement, and therefore no rights, enforceable against the society, passed from them to their heirs or personal representatives.*

"The soundness of the view that the deceased ancestors and collateral relatives of the plaintiffs could transmit to them no rights, enforceable against the Harmony Society, as a living organization, is impliedly conceded by the bill, for it alleges that the society has to come to an end. The bill proceeds upon the theory that a dissolution of the society had been brought about."

OPINION IN THE CIRCUIT COURT OF APPEALS.

That court, in an unanimous opinion by Gray, J., adopted in words the conclusions hereinbefore given by Judge Acheson, and affirmed the decree of the Circuit Court.

Schwartz vs. Duss, 103 *Fed. Rep.*, 528.

See *Record*, 214 to 218.

LEGITIMATE INFERENCE FROM THESE TWO DECISIONS.

While Judge Acheson did firmly decline to take up and discuss the questions of law above named, the legitimate conse-

quences of what he did rule confirm the proposition for which we have been contending, *i. e.*, that the assets of the society would go to the living members of the society at the time of the distribution. This necessarily follows from his findings, that the member who died and the member who departed terminated forever his respective connection with the society and rights to any of its property, and that the dead member left no title whatever of any kind to his heirs in or to any of the property of the society. *Consequently*, those members who were left were of necessity the owners of the property and entitled to do with it what they would.

OTHER AUTHORITIES.

The cases which have arisen by withdrawing members and others against the Harmony Society are as follows:

First comes the case of Schriber vs. Rapp, 5 *Watts*, 351, decided in 1836.

The Supreme Court of Pennsylvania, in Schriber vs. Rapp, considered the agreements of 1805, 1821 and 1827 only, as the case arose prior to the agreement of 1836, and is, therefore, specially significant of the reasoning hereinbefore urged, to wit, that the same result followed under the agreements of 1805 and 1827, as under the agreement of 1836.

In this case Peter Schriber, one of the members of the Harmony Society, died, and his administrator brought an action of account render against the society. It was proven

that the decedent had contributed largely to the society, but the case was decided against his claim. The Common Pleas Court held, page 359:

> "The articles of association executed by the plaintiff's intestate *are a complete bar to the plaintiff's recovery in this case*, unless the plaintiff's intestate has had a fraud practiced upon him, and been induced to sign them by fraud and imposition.
>
> * * * * * *
>
> "There is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts, *or public policy.*"

Gibson, Chief Justice, delivering the opinion of the Supreme Court, among other things, said, in speaking of the Harmony Society, that it was not a partnership; and then, speaking and defining the rights of the members, he said:

> "At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession, * * It is supposed, however, that as the intestate had power, by the articles, to secede from the society and take out of it whatever he had brought into it, *the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles;* nor would a posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by the administrator of one dead without kindred would wrest the property from the society, only to give it to the estate by escheat. The right of secession, therefore, *is intransmissible;* and were it not, the intestate's release would be a bar."

Nachtrieb vs. Harmony Society, 3 Wallace, Jr., 66, was decided by the Circuit Court of the United States in 1852, having been brought to No. 28 Nov. Term, 1849, in Equity.

That was a Bill in Equity, in which Nachtrieb alleged he had been a member of and worked for the society from 1819 to 1846, when he had been unlawfully expelled from the society, and prayed for an account of the sums due him for labor and of his share of the property of the association.

The Circuit Court—Grier and Irwin, Justices—held that Nachtrieb was *unlawfully expelled*, and he was therefore entitled to his full share of all the property the society owned. The members then being 321, his share was the 1-321.

Grier, J., in his opinion, 3 *Wallace, Jr.*, 82, held that,

> "each (member) had an equal right to and interest in their common property, and (each) had estopped himself *from even setting up any claim for property* or labor contributed to the common stock in case of a voluntary withdrawal from the society."
>
> " * * * * * In dealing with the rights of personal property, the court can only look at the agreements of the parties as written and signed by themselves. * * * * These (members of the society) accumulated for themselves; they have by joint labor accumulated property of great value which they hold as joint owners. The complainant had an equal ownership with his 320 partners. By their contract it had to remain joint and indivisible stock forever, but the complainant has his right to enjoy it equally with his fellows. Their articles of partnership or association provide for the case of any partner who chooses to withdraw or depart from it, but makes no provision for those who are unjustly driven away and expelled. * * * * The dissolution of the partnership by the wrongful act of the majority of the firm or association necessarily dissolved *inter sese*, viz., as between the expelled and the remaining partners, the covenants as to the

> indivisibility of their joint property * * * * and the proper measure of his compensation is the amount of his interest or share at the time of his expulsion. It is not like a mere corporate privilege or office to which a court of equity may restore a corporator who has been wrongfully expelled. It is a question of the enjoyment of the property. His copartners have ejected him from his joint use and enjoyment of their common property; they have severed the tenure as between him and themselves, and he has a right to his share in severalty. This is the proper measure of the complainant's compensation. * * * * Let the decree be for the one-three-hundred-and-twenty-first part of the whole property of the society."

In a concurring opinion, filed April 8th, 1852, Irwin, J., elaborately examines the different agreements, and arrives at the conclusion that the common property of the society belonging to the society, and if at any time it was dissolved it would be divided *among those who are the members when such dissolution occurred.* That these members could dissolve it and divide the property, and no one else except members could share in the division. That the unlawful expulsion by the society of Nachtrieb entitled him to his share of the common property.

The case was appealed to the Supreme Court of the United States, and is reported as Baker *et al.* Trustees, vs. Nachtrieb, 19 *Howard*, 126, and was decided in 1856.

The court below was reversed (without a dissent from Grier, J.), on the point that the receipt Nachtrieb signed when he left the society

> "must be treated as the contract of dissolution between the plaintiff and the society of their mutual obligations and engagements to each other."

So treated, the Bill in Equity was not properly framed to attack it for fraud, and hence it was conclusive that Nachtrieb had no claim against the society.

It will be noticed that the receipt was as follows:

> "To-day I have withdrawn myself from the Harmony Society and ceased to be a member thereof; I have also received of George Rapp two hundred dollars as a donation agreeably to contract."

This Nachtrieb case, as ruled in the Circuit and Supreme Court, is full to the proposition that by a voluntary withdrawal the one so withdrawing lost all his claim or rights of, in, to, or out of the common property of the society.

The case of Lemmix vs. Harmony Society No. 2, November Term, 1852, of the Circuit Court of the United States for the Western District of Pennsylvania, in equity, was a bill filed June 10th, 1852, alleging an unlawful expulsion, and praying for an account as in the Nachtrieb case. Issue was joined, testimony taken, and on February 3d, 1855, Judge Irwin filed an opinion dismissing the bill on the ground that the plaintiff had failed to show an unlawful expulsion.

Though a bond was filed for an appeal to the Supreme Court of the United States, it does not seem it was prosecuted.

This case is direct authority to the effect that the society may expel a member, and when properly expelled all his rights to the common property of the society cease and determine.

The next case was that of Speidel vs. Henrici et al., reported 120 U. S. Reports, 377.

The bill in equity was filed June 7, 1882, by Speidel, who alleged that he was at one time a member of the society, but left it in 1831 to be married.

The bill alleged fraud practiced by Rapp and his society against Speidel and other members; that the system of the society was contrary to the laws of the land, and against public policy; that the property of the society was held in trust by Henrici and Lenz, and was of great value, and the prayer was,

> "that said trust be rescinded and held for naught as resting upon fraud and iniquity, and being contrary to public policy and the laws of the land."

that an account of the trust estate be taken, and a distribution thereof made.

The defendants demurred on the following grounds:

(1) Statute of Limitations.

(2) Stale claim, which equity could not aid.

(3) Case stated in the bill not entitled to relief in equity.

The Circuit Court, McKennan, J., sustained the demurrer on the second ground. An elaborate opinion, to which we ask attention, was filed, and, amongst other things, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious, as well as secular, polity of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"
>
> Speidel vs. Henrici, *15 Fed. Rptr., 753.*

In the Supreme Court Mr. Justice Gray delivered the opinion to which there was no dissent, sustaining the decree in the court below, and, among other things, that opinion says:

> "The trust on which Rapp, and the defendants as his successors, held the common fund of the Harmony Society, is described in one place in the bill as for the members of said families and the contributors of said fund and for their common benefit, *that is to say, as is clearly explained by what goes before, in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulation, of the community, and supported by the community.* This was the 'said trust,' which, as the bill afterwards alleges, Rapp, up to his death, and his successors, until the bringing of this suit, 'always recognized and acknowledged.' The constant avowal of the trustees that they held the trust fund upon such a trust is wholly inconsistent with and adverse to the claim of the plaintiff that they held the fund in trust for the benefit of the same persons as individuals, though withdrawn from the community, living by them selves, and taking no part in its work.

"The plaintiff, upon his own showing, withdrew from the community in 1831, and never returned to it, and, for more than fifty years, took no step to demand an account of the trustees, or to follow up the rights which he claimed in this bill.

"If he ever had any rights, he could not assert them after such a delay; not on the ground of an express and lawful trust, because the express trust stated in the bill, and constantly avowed by the trustees during this long period, was wholly inconsistent with any trust which would sustain his claim; not on the ground that the express trust stated in the bill was unlawful and void, and therefore the trustees held the trust fund for the benefit of all the contributors in proportion to the amounts of their contributions, because that would be an implied or resultant trust, and barred by lapse of time. In any aspect of the case, therefore, if it was not strictly within the statute of limitations, yet the plaintiff showed so little vigilance and so great *laches* that the Circuit Court rightly held that he was not entitled to relief in equity."

POINTS DECIDED IN THE FOREGOING CASES.

Here, then, we have the Supreme Court of Pennsylvania in the *Schreiber* case decide flatly *that a member's death terminated his connection with the society and his legal representative was not entitled to recover anything from the society.*

The Circuit Court of the United States, Greer, J., on the bench, in the *Nachtrieb case* just as flatly held that each member of the society

> "had estopped himself from ever setting up any claim for property or labor contributed to the common stock in case of a voluntary withdrawal from the society."

Speaking further of a case in Pennsylvania (Comm'th vs. St. Patrick's Asso., 2 *Binney*, 441) where the Supreme Court had awarded a mandamus restoring a member of the corporation, Judge Greer said:

> "That was a corporation for benevolent purposes, where membership and not the ownership and enjoyment of property to the corporator's own use, was the object. Its members accumulated to give away or to expend on charitable purposes. *These accumulated for themselves.* They have by joint labor accumulated property of great value, which they hold as joint owners. The dissolution of the partnership by the wrongful act of the majority of the firm or association necessarily dissolves *inter sese*, viz: as between the expelled and remaining partners the covenant as to the indivisibility of their joint property."

He thus treated the society as dissolved *pro hæc vice* and divided the property among its members, 321 in number.

He gave to the one who sued the 1-321. To all the others, constituting 320, the 320-321.

This decree of Judge Grier was exactly the proposition we have contended for, *i. e.*, that the *property belongs to the living members who at any time compose the society, and this excludes every other person.*

This court, in reviewing the Nachtrieb case, held that the receipt which Nachtrieb gave, showing a voluntary withdrawal from the society, *ended and determined all his rights to its property*, and to the argument of Nachtrieb's counsel that the withdrawal was *not* voluntary, held the bill was not properly framed to raise that question.

The Lemmix case (not reported) was by an expelled member for his share of the society's property. The Circuit Court held he was properly expelled, and therefore had no longer any claim to the property of the society.

The Spiedel case was by the heirs of one who withdrew from the society, and filed a bill for a share in the common property. It went off on the question of laches, but the Circuit Judge, McKennan, said:

> "The trust alleged here was instituted for the equal and exclusive benefit of the members of the Harmony Society. * * * Fellowship in the society was the only recognized title to participation in its benefits. *When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

This court, in reviewing the case below, defined the trust as

> " * * * in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulations of the community and supported by the community."

CASES AS TO THE ZOAR COMMUNITY—SHAKERS' SOCIETY—ONEIDA COMMUNITY.

The next case to which we call attention is one arising under the Zoar agreement, a society in many respects like the Harmony Society, and the agreements and the general purports of the society being practically the same as that of the Harmony Society. The case arose in the Circuit Court of the United States for Ohio in 1851, and is reported as Goesele vs. Bimeler et al., 5th *McLean's Reports*, 223, and was heard by McLean, justice of this court. The governing portions of the articles of agreement of the Zoarites, made in 1819 and 1824, are given on pp. 224, 225 and 226 of the report, and are practically identical with the Harmony Society, especially in two respects: (1) That each of the members absolutely surrendered all his property to the society, and (2) the death or withdrawal from the society terminated all his rights in the society or to any of its property.

Goesele, the complainant in the case, had joined the society and remained with it until his death, in 1827. In 1851 this suit was brought by his heirs, claiming to be en-

titled to his share in the property of the society, and Mr. Justice McLean treated the questions at considerable length.

On p. 229 he stated that the legal questions in the case arose out of the articles of 1819 and 1824, and stated that the complainant alleged that (*a*) there is no legal grantee to whom the property was conveyed, and (*b*) that if there ever was a grantee, the grant would be void as a perpetuity. Disposing of those questions, and holding that neither of them was sound, the court proceeded, *inter alia*, to say (p. 230):

> "The agreement was that the equitable individual right to the trust should be relinquished for a common right with the other members, to the entire property. In effect, it was constituting a universal partnership, known to the common law, and which is not in any violation of any of its principles. The members of the society, in their own language, 'unite and bind themselves by and through this common and social contract, under the name and title of the "Separatist Society of Zoar," and they agree and bind themselves, and promise each to the other, and all together, that they will strictly hold to, observe and support all the following rules and regulations,' etc. The name of the society was used as a designation of the whole body, the same as the assumed name of a firm to designate its partners. *Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions, for the common right of an interest in the whole. This common right was limited to the members of the association; consequently those who left it or were expelled forfeited such right.* This was a condition voluntarily adopted in the articles of association, and there is no evidence showing unfairness, deception or fraud in the agreement. * * *
>
> "The relinquishment of individual right, present and future, was to the society—in other words, to themselves—a giving up and surrendering an individual interest in a part of the property, for a common interest in the whole of it. By this arrangement, the members of the association were placed on an equality as to their interests in the property and

their enjoyment of it. Their minutest wants were alike provided for, through the agencies established; and this was the consideration on which the contract was founded. *That, in the absence of all fraud and unfairness, this was a bona fide and legal contract, cannot be doubted.* An important part of this contract was that the property thus surrendered should belong ONLY to the members of the association; *consequently the heirs of the members could not claim an interest in the property as heirs, but only as members.* Against such a disposition of property I know of no principle of law or morals. Any individual has the power to divest himself of his property, real and personal, for a valuable consideration. * * *

"Goesele and the other members, when they relinquished their individual property for a common interest in the whole, and appointed agents to manage the concern, expressly agreed to receive as a consideration for their property and labor a support for themselves and their families, including clothing and every other provision necessary for their comfort. The acquisitions would necessarily increase their comforts, by enlarging their means of subsistence; *but the property was only to be enjoyed while they continued members.* This was the substance of the contract, fairly entered into and ratified under the most solemn sanctions, after five year's experience. There was no grantor or assignee, and none was necessary. It was a partnership agreement among themselves, and was binding upon each individually who entered into it.

"If there be no principle of law opposed to such a community of property it must be held valid on the rules which apply to partnerships. There are no moral considerations opposed to it. In adopting it the Separatist Society followed the example found in the early history of the apostles, and which received an awful sanction of heaven. * * * * Upon a deliberate consideration of this case, I am brought to the conclusion that the complainants are not entitled to relief against the contract of their ancestor, entered into *bona fide* and for a valuable consideration. For the reason stated, I think the agreement entered into by the members, giving up their individual interest in the property for a common interest in the whole of it, so long as they shall

remain members, is not void in law; and, consequently, the bill of the complainants must be dismissed."

This decree was appealed from, and is reported as Goesele *et al.* vs. Bimeler *et al.*, 14 *Howard*, 590. It was there held, by the unanimous opinion of this court, that on the withdrawal or death of a member his individual connection with the society ceased, and that, as he had no ownership in the property, nothing was transmitted to his heirs. That the plaintiff in that case, who was the heir at law of Goesele, had no title whatever to the property of the society.

This court, *inter alia*, said:

"All individual right of property became merged in the general rights of the association. *He had no individual right and could transmit none to his heirs.* It is strange that the complainants should ask a partition through their ancestors when, by the terms of his contract, he could have no divisible interest. They who now enjoy the property enjoy it under his express contract.

"What is there in either of these articles that is contrary to good morals, or that is opposed to the policy of the laws? An association of individuals is formed under a religious influence who are in a destitute condition, having little to rely on for their support but their industry; and they agree to labor in common for the good of the society and a comfortable maintenance for each individual; and whatever should be acquired beyond this shall go to the common stock. This contract provides for every member of the community, in sickness and in health, and under whatsoever misfortune may occur. And this is equal to the independence and comforts ordinarily enjoyed.

"The ancestor of the complainants entered into the contract fairly and with full understanding of its conditions. The consideration of his comfortable maintenance under all circumstances was deemed

by him an adequate compensation for his labor and property contributed to the common stock. But it is not shown that Goesele or any other member contributed to the general fund with the exception of a small sum by Goesele, which, probably, could not have exceeded five dollars. The members of the association were poor and were unable to contribute anything but labor. In this way the land purchased by Bimeler was paid for.

"The complainants speak of the interest of their ancestor in the real and personal estate owned by the association, and their counsel contend that the articles did not divest him of either, but both descended to his heirs at law at his death.

"This argument does not seem to comprehend the principles of the association. Land and other property were to be acquired by the members, but they were not to be vested with the fee of the land. While they remained in the society, under its general regulations, the products of their labor on the land and otherwise were applied, so far as necessary, to their support. Beyond this they were to have no interest in the land or in the personal property. Many of the members were aged females; others from sickness or disease were unable to labor; but every one, whether able to labor or not, was provided for by the labor of the community. This was a benevolent scheme, and from its character might properly be denominated a charity. But from the nature of the association and the object to be attained, it is clear the individual members could have no rights to the property except its use under the restrictions imposed by the articles. The whole policy of the association was founded on the principles which excluded individual ownership. Such an ownership would defeat the great object in view by necessarily giving to the association a temporary character. If the interests of its members could be transferred or passed by descent, the maintenance of the community would be impossible. In the natural course of things, the ownership of the property in a few years by transfer and descent would pass out of the community into the hands of strangers, and thereby defeat the object in view.

"By disclaiming all individual ownership of the property acquired by their labor for the benefits

secured by the articles, the members gave durability to the fund accumulated and to the benevolent purposes to which it is applied. No legal objection is perceived to such a partnership. *If members separate themselves from the society their interest in the property ceases, and new members that may be admitted under the articles enjoy the advantages common to all.* * * * * It is said where a member is excommunicated or leaves the society he forfeits his right, and chancerry will not enforce a forfeiture. What is the extent of this forfeiture? It is the right to a support from the society. And this is certainly reasonable. Can a member expect to be supported by the society when he refuses to perform his part of the contract which entitles him to a support? He claims pay for his labor. He has been paid for this in pursuance of his own contract. In sickness and in health he has been clothed and fed and a home provided for him. But he claims the payment for property which he surrendered to the association at the time he became a member of it by signing the articles. The ownership of this property he relinquished to his associates as a part of the contract, and for the considerations named, all the payments for such property, and in the language of the articles signed, 'the individual abolished and abrogated for himself and his heirs. * * * * The surrender or giving up of the property was a part of the consideration on which the association stipulated to support him. It cannot be separated from that agreement. And it is clear, where the fault of not carrying out the contract is not attributable to the association, but to the member, he cannot have the aid of a court of chancery.'"

The Supreme Court of Ohio, in the case of Gasely *et al.* vs. Separatist Society, of Zoar, 13 *Ohio State*, 150, in 1862, took up and considered the agreements of that society and arrived at the same results as in the case just cited.

The Court of Appeals of the State of New York in the case of Burt vs. Oneida Community, 137 *New York*, 346, consid-

ered the articles of association on which the Oneida Community was organized, many of the provisions of which are substantially the same as those in reference to the Harmony Society.

In that case Burt, one of the members, was expelled, and he filed a bill asking to be reinstated, but the court held that the community had the right to expel a member, and that expulsion terminated his personal connection with the society, and all his rights to the use or enjoyment of the property of the society.

The Court said:

> "The plaintiff's grievance consists of the denial by the defendants of certain rights, which, he claims, he was entitled to as a member of the Oneida Community, an unincorporated association, first formed at Oneida, in this State, in the year 1848. His father was one of its founders, and the plaintiff, who was then four years of age, became provisionally a member of the community during his minority. Upon attaining his majority he formally assented to its article of covenant, and remained in its communion until the year 1880, when the controversy arose between him and his associates, which culminated in the commencement of this action January 12, 1884. It is not important to consider here the moral and religious teachings of the community, which were manifestly potent influences during the formative period of its existence. What principally concerns us now was its status as a business compact, and we must stop when we have construed the contract relation of the parties and determined the rights acquired by virtue of a membership therein.
>
> "In this aspect the main purpose of its promoters was evidently the propagandism of certain communistic views as to the acquisition and enjoyment of property, and the endeavor to put into practical operation an economic and industrial scheme which should embody and illustrate the doctrines which they held and inculcated. Necessarily the basic proposition of such a community was the absolute

and complete surrender of the separate and individual rights of property of the persons entering it; the abandonment of all purely selfish pursuits, and the investiture of the title to their property and the fruits of their industry in the common body, from which they could not afterward be severed or withdrawn except by unanimous consent. * * *

"Accepting the plaintiff's version of his conduct and declarations, we think it must be held that he renounced his obligations as a member of the community and severed his conventional relations with it. It cannot aid him that he attempted to reserve to himself the privilege of returning and resuming membership. The constitution of the community did not admit of the exercise of such an option: He could not withdraw when, in his judgment, such a course would be profitable and assert the right to come back and be received into the fellowship of the association when it suited his pleasure or convenience or self-interest to do it. The community had not made a unilateral bargain of that kind with him. He had not so far surrendered his freedom of action that he might not go out at any time without their assent; but in so doing he terminated his right to share in the enjoyment of the use and possession of the property of the concern. It is not correct to say that by his withdrawal from membership he forfeited his interest in the lands and chattels of the community. He forfeited nothing. The contingency or event upon which the existence of his estate in the property depended had happened. By the terms of the contract under which that estate was acquired its duration was only co-existent with the duration of his membership. * *

"It appears from the record that on October 16, 1880, a preliminary certificate for the incoporation of the defendant, the Oneida Community, limited, under the business companies act of 1875 (chapter 611), was executed by nine members of the community, including the property holders who held the deeds of its real property, and filed in the secretary of state's office. The objects of the proposed coporation were to carry on a general manufacturing and agricultural business, including all the different kinds of business in which the community was then engaged. The capital stock was $600,000,

which fairly represented the net value of its property, and the location of its principal business office was atthe home of the community in Madison county. The secretary of state issued to the proposed incorporators the license required by law. Books of subscription to its stock were opened, and such proceedings had that the entire capital was subscribed by the adult members of the community, about two hundred in number, in varying amounts, and the final certificate of incorporation filed November 20, 1880. On or before January 1, 1881, all the property of the former community belonging to it and held by its property holders was transferred to the corporation, and since that time has been owned and used by the corporation, which has carried on the different kinds of business theretofore undertaken by the unincorporated association, which has not, since January 1, 1881, been engaged in any business, and, so far as appears from the record, has not undertaken to discharge any of the obligations in its covenant with its members.

"The plaintiff insists that the association to which he belonged has thus committed an act of self-destruction, and has become dissolved, and he is, therefore, entitled to have its assets equitably administered and distributed, and to receive his proportionate share thereof. It may be that the old community has, by the act of its members, been dissolved. The referee held otherwise; the General Term refrained from expressing an opinion upon this point, and we do not consider it a material question upon this appeal. If it were sound as a proposition of law it would not help plaintiff. He had ceased to be a member of the community before the action was taken, and his property rights were not prejudiced by it."

In Waite vs. Merrill *et al.*, the Supreme Court of Maine, in 1826, in a case reported in 4th *Me.*, 90, considered the validity of the agreements of the Shaker Society. The case was most elaborately argued by eminent counsel and carefully considered.

In substance, the Shaker agreements coincided with the Harmony Society in the two important respects here considered:

(1) Each member surrendered all his individual property to the society and agreed to labor for it.

(2) Each member agreed that on his death or withdrawal, neither he or his heirs, executors or administrators should have any claim against the society or to any of its property.

It was further alleged that celibacy was a part of the pronounced policy of the society. The lower court charged, *inter alia:*

> "That there was nothing in the covenant itself inconsistent with law or morally wrong which would render it void; and that, therefore, however inconsistent with their own particular views of Christianity or religion, the faith of the Shakers, as developed in this cause might be, yet, if they were satisfied that the plaintiff knowingly signed the covenant, their verdict ought to be for the defendant."

The unanimous court sustained this ruling; and, in an opinion covering many pages considered and passed upon all of the objections urged, and held that the agreements were binding and obligatory upon all who knowingly signed them, and that there was nothing contrary to public policy or public morals in the same.

We ask for a careful consideration of the arguments and the opinion in that case.

The Supreme Court of Massachusetts, in the case of Grosvenor vs. the United Society of Believers, 118 *Mass.*,

78, also considered the agreements of that society. The case mainly turned on the right of expulsion, which that court sustained, and it especially confirmed the right of the ruling body to determine when the expulsion should be decreed, and that, when once expelled, the member forever forfeited all rights in the society, or to any of its property. Such rights could not thereafter be maintained, either by the member himself or by his heirs or legal representatives or executors.

MANNER IN WHICH THE PROPERTY OF THE SOCIETY IS HELD.

Prior to his death, in 1834, Frederick Rapp, a member of the society and the adopted son of George Rapp, had been its business agent for the purpose of transacting its external business. He was the party in whose name all contracts were made, all external business conducted, all property bought and sold. The deeds to him were in fee simple, to him and his heirs, without any designation of trust.

By a separate paper Frederick did declare that he held the property in trust for the Harmony Society, but this declaration of his was in no shape or form connected with the grants of real or personal property to him, but those grants vested in him an absolute, unqualified title in fee simple.

After the death of Frederick, in 1834, the then members of the Harmony Society, on July 5th, 1834, gave a power of attorney to George Rapp, constituting him the general agent of the society in place of Frederick Rapp, and gave to George

Rapp the additional power to appoint agents and substitutes under him. Four hundred and two persons then constituted the society, and George Rapp, on the same day, appointed Romelius L. Baker and Jacob Henrici as the agents under the power given to him. This power of attorney, signed by all these members, is as follow:

> "*Know All Men by These Presents:* WHEREAS, Frederick Rapp, of Economy, in Beaver county, State of Pennsylvania, recently deceased, was for a series of years the agent, in temporal affairs, of the Harmonie Society, carrying on in his own name all the external business of said society, and taking to himself the titles to real estate, as well as the evidence of claims arising out of the various transactions of said society;
>
> "AND, WHEREAS, by an instrument dated the 20th of July, 1825, under the hand and seal of said Frederick Rapp, he solemnly and irrevocably declared that all the property, real, personal and mixed, which then was or hereafter might be in his possession or enjoyment, or the title to which he then held or might hereafter hold, was and should be considered the property of the said society, in which he, the said Frederick, had no absolute interest whatever;
>
> "AND, WHEREAS, the lamented death of the said Frederick Rapp renders it indispensable that a new agent should be appointed, by whom the temporal affairs of the society may continue to be managed in a mode which has proved convenient and satisfactory;
>
> "NOW, THEREFORE, be it known, that we, the undersigned, constituting said Harmonie Society, so hereby nominate and appoint George Rapp, of Economy, in the county of Beaver, the general agent of said society in all its temporal affairs.
>
> "The powers intended to be conferred on the said George Rapp are hereby declared to be as follows, that is to say:
>
> "1. To ask for, demand and receive from each and every bank or other incorporated company, partnership, or individual person or persons, the amount which may be due therefrom, in the way of principal, interest or dividend, to the said Harmonie Society, or to Frederick Rapp, whether the same be

evidenced by judgment, mortgage, bond, certificate of stock, note, bill of exchange, deposit of money, book account, verbal promise, sale or barter, loan of money, or arise in any other manner whatsoever the check, order, receipt, acquittance or release of the said George Rapp to be as effectual as if executed by all and each of us, or as if it had been executed by the said Frederick Rapp in his lifetime.

"2. To execute and receive all deeds and conveyances, in fee simple or otherwise, on behalf of the society, whether the title thereto stand in the name of the society or of Frederick Rapp or of George Rapp and associates. The act of the said George Rapp relative thereto to be as valid and sufficient as if executed by us or by the said Frederick Rapp in his lifetime.

"3. To carry on, by himself or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description.

"4. To constitute and appoint an agent or agents under him as he may deem advisable, imparting to such substitute or substitutes, should he think fit, the whole or any portion of the authority hereby conferred on himself. He may also, at his pleasure, revoke such instrument of substitution whenever he may think such revocation called for by the interests of the society.

"5. It is distinctly understood that in accepting and acting under this power the said George Rapp disclaims all personal interest, other than that of a member of said society, in the present resources or future earnings of the society, in conformity with the principles and terms on which the Harmonie Society was orignally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already averted to, dated 20th July, 1825, the terms of which instrument the said George Rapp hereby adopts for himself and repeats in every particular.

"In witness whereof the undersigned, members of the Harmonie Society, who constitute said society, have hereunto set their hands and seals, at Economy, in Beaver county, this fifth day of July, in the year of our Lord eighteen hundred and thirty-four."

(Signatures.)

(Acknowledgment.)

"By virtue of the authority expressed in the fourth article of the foregoing power of attorney, I do appoint and substitute, in my place and stead, Romelius L. Baker and Jacob Henrici, of Economy, Beaver county, Pennsylvania, to act as general agents of the Harmonie Society aforesaid, jointly or severally in my name, and for the use of said society, to do and perform all acts and things which, as the general agent of said society, I am authorized to do. It being distinctly understood, however, that in accepting and performing the office and business of general agents of the said society the said R. L. Baker and Jacob Henrici shall neither acquire nor claim any personal interest in the present resources or future earnings of the said society other than that of a member of the said society, agreeably to the plans and terms of the association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp, on the 20th day of July, 1825, and referred to in the foregoing power of attorney to George Rapp.

"Witness my hand seal, this fifth day of July, A. D. eighteen hundred and thirty-four.

"GEORGE RAPP. [SEAL.]

"Signed, sealed and delivered in the presence of

"WM. ALLISON,

"JOHN NEELY."

(Acknowledgment.)

In 1847 the members of the society changed the mode of holding the property, and enacted the following:

They appointed two trustees

"for the exclusive management of the external business and affairs of the society."

These trustees were given the following powers:

"In their own names or that of either of them or otherwise to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business. * * * * The said trustees shall have power jointly to *purchase* real estate in *their own names*, and also in their joint names to grant, bargain, sell and convey all or any

> of the lands and tenements now or hereafter owned by or belonging to the said society. * * * The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the said Frederick Rapp or George Rapp, or in any other name or form whatsoever.
>
> "Article 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees, or persons under them, is and shall be deemed the common property of the said society."

Beginning with Frederick Rapp, the title to all the real estate has been conveyed to Frederick Rapp or George Rapp, or the trustees individually, and to their heirs, so as to vest an absolute fee simple title. The present writer cannot speak as to all the deeds to the trustees. There may be in some a trust for the society declared on the face, but the great body of the real estate which was originally conveyed to Frederick Rapp or to George Rapp or to the trustees was to the grantee individually and his heirs, vesting a fee simple, indefeasible title, without any trust whatever apparent upon the face of the deed.

The title which the society has to all its property is as follows:

A fee simple absolute in the grantee, Rapp, or the trustees as individuals, with a trust declared by the grantee for the use of the society.

The deeds conveying the property to Frederick Rapp when he was agent, or to Baker and Henrici when they were agents, or to the trustees after the agreement of 1847, are not in evidence. The whole tract of land at Economy was conveyed

by outside persons to either Rapp or subsequently the trustees as individuals, and unless it may be an occasional and exceptional case, to the grantee individually and his heirs, without any trust appearing in any way in the purchase from the outsider. As between the grantor and grantee, there was no limitation whatever of the estate granted. It was an absolute fee simple. It was not to or for any particular purpose or for any particular time or upon any condition of any kind. It was an absolute unconditional conveyance in fee simple.

As between the grantee and the Harmony Society, there was a declaration of trust in favor of the society, but this in no way limited or interfered with or lessened the estate which the grantee took in fee simple. It simply said as between the society and the grantee, this absolute fee simple I hold for your use.

This being so, there can here be no question whatever of a *base* fee, or a resulting trust or perpetuity or want of proper parties as grantees. If there was it would defeat the plaintiffs' right as well as our own, for they only pray to share in the property the society owns.

BASE FEE—RESULTING TRUST—WANT OF PROPER GRANTEES—PERPETUITY.

It is, however, claimed that the estates granted under the different agreements by the individual members to Rapp and his associates are faulty because they are alleged to be:

(*a*) Merely the creation of an estate during the lifetime of the society as such, and therefore but a base or conditional fee.

(*b*) That a trust resulted in favor of the different individual members, so that, after the dissolution of the society, the property each individually conveyed to Rapp and his associates reverted to each.

(*c*) That the pretended grants under the agreements were severally void, because of want of proper persons as grantees; that a mere unincorporated association cannot be grantee.

(*d*) The conveyances under the agreements violate the rule against perpetuities, and are, therefore, void.

As the master has found, and the fact is, that no one of the plaintiffs or their ancestors ever did convey *any property whatever*, real or personal, to the society, it is not easy to see how any of these plaintiffs can be benefited by a conclusion sustaining any one of these four propositions. If one or all are true, the plaintiffs would not thereby derive one cent of benefit.

If the society only took a *base* fee, and the estate terminated when the society ended, the property reverted to the grantors, and no one of the plaintiffs, and no one of their ancestors ever was a grantor.

If the property of the society is only for a defined purpose, so that there exist resulting trusts when the purpose is fulfilled, still it is the grantors to whom the trusts result, and not any one of the plaintiffs.

If the society took no title whatever because of want of proper grantees, still it is the grantors who will retake the property and not the plaintiffs.

If the conveyancer under the agreements violates the rule as to perpetuities, still it is the grantors who benefit, and not the plaintiffs.

We are not, however, unwilling to discuss, but really anxious to have these questions settled, and we, therefore, consider them as involved in the case.

A *base fee* is where the estate is conveyed only until the happening of a certain event, which event, when it happens, will determine the estate. Thus a grant to *A* and his heirs until *B* returns from Rome is a base fee, and when *B* returns from Rome the estate is determined.

1st *Washburn on Real Property*, p. 94.

See cases cited by the master (Record, pp. 96 and 97).

The condition or limitation in a base fee must always be clearly expressed.

Methodist Church vs. Old Columbia, 103 *Pa.*, 608.

Such an estate, therefore, is not an absolute parting by the grantor with all his interest in the thing granted, but leaves an estate in him which is carved out of the entire fee simple estate which he owned in the property at the time of the conveyance.

Lord Hardwick defines three classes of *resulting* trusts as follows:

1st. Where the estate is purchased in the name of one, but the money is paid by another.

2nd. Where the trust is declared in part only, the residue remaining undisposed of.

3rd. In certain cases of fraud.

Lloyd vs. Spillet, 2nd *Atk.*, 148–150.

Any substantial consideration paid by the grantee would be sufficient to repel the presumption of a resulting trust.

2nd *Washburn on Real Property*, 504, 505.

> "If the conveyance has been made upon a valuable consideration there can be no resulting trust to the grantor, as the payment of a valuable consideration imparts an intention to benefit the grantee in case that the trust declared fail or are imperfectly declared, or do not take, or for any other reason."

1st Perry on Trusts, sec. 151, and cases cited.

See also sections 152-153.

To create a base or conditional fee or a resulting trust, it is evident in the cases, other than of fraud, that the grantor has reserved to himself, either expressly or by necessary implication, an estate in the thing granted, which, on the happening of a certain contingency, will ripen into possession.

Now, did the members who joined the Harmony Society and signed the agreements conveying their property to Rapp and his associates intend to grant only a conditional estate in the thing granted and reserve to themselves a usufruct to ripen into an actual beneficial estate on the happening of a certain contingency, to wit: the termination of the society.

These questions are answered by the words of the agreement.

Read Article 1 of the agreement of 1805.

Read Article 1 of the agreement of 1827.

Read Articles 2 and 3 of the agreement of 1836.

Here is an absolute, unqualified, definite grant. No use is stated, or hinted at, except the use of the grantees put in all deeds. No estate in reversion ever imagined. No contingency upon which the donor might again regain his property even hinted at. The donor parts absolutely with his estate, absolutely and unqualifiedly, without any reversion.

In the language of the agreement of 1805 it is—

> "all our estate and property."

And it is:

> "as a free gift or donation."

Binds himself:

> "as well as on the part of our heirs and descendants, to make free renunciation thereof, and leave the same at the disposal of the superintendents of the community, *as if we never had nor possessed it.*"

The agreement of 1827:

The language is:

> "do hereby give, grant and forever convey to the said George Rapp and his associates, and *their heirs and assigns*,"
>
> "all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally."

Now, note:

> "in possession or in *remainder*, or in *reversion*, or in *expectancy*, whatsoever or wheresoever, without evasion, qualification or reserve."
>
> "as a free gift or donation."
>
> "And we do hereby bind ourselves, our *heirs*, executors and administrators, to all such other acts as may be necessary to vest a *perfect title* to the same

in the said association, and to place the said property at the *full disposal* of the superintendents of the said community without delay."

Could there be a more absolute, unqualified parting with all title to the property conveyed than this?

It names, as if to exclude the idea of a reversion or a resulting trust,

"in reversion or in expectancy."

It binds himself and heirs to make

"a *perfect title* to the same in the said association."

Not a base fee or a limited trust, but a *perfect title.*

There is no limitation of the uses to which the property might be put.

"For the benefit and use of the said association or community."

Just as our deeds convey to and for the use of the grantee.

No limit to the use.

And then, this is to be a *perfect title*, so that it may be

"at the *full disposal* of the superintendents."

How could it be a *perfect title*, and at such full disposal, if George Rapp and his heirs only got a "base fee," or if the estate was only to endure so long as the society had a "patriarch," or practiced "celibacy," or preached "the second advent?"

Then, the agreement of 1836:

It denounces the idea of "*restoration of property*," as being of "pernicious tendency," and because it would be impossible to enforce it fairly.

It declares that—

> "all the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed now and *forever* 'joint and indivisible stock.'"

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions whatever they may be."

> "*Finally and irrevocably parted.*"

Under this language how can one talk of reserving an interest in the thing granted!

Section 3:

> "3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

There is, then, in all these articles a marked and expressed intent that the donor parted with all his estate, and neither he nor his heirs, at any time, were to have any claim, or title, or right of any kind to any part of it.

The title granted was to be, and was a *fee simple absolute.*

No matter what happened in the future, or who it went to in the end, the donor could not follow it.

Here is *the marked difference* between our case and such cases as

Cunnach vs. Edwards, 13 *Repts.* (ch) 334.

See also opinion of Greer, J., cited *ante* in Nachtrieb case, the difference between a charitable organization and the Harmony Society. The former receives contributions to give away. The members of the latter accumulate by work and trade for their own joint benefit and use.

See as to ownership—

Brown vs. Dale, 9 *Chancery Div.* (L. R.), 78.

Each one of these agreements, 1805, 1821 and 1827, contain a valuable consideration moving from Rapp and his associates, the grantees, to the joining member. Rapp and his associates promise the joining member to support him and his family in sickness and in health, and to clothe, feed and provide for him during his and their whole life, provided he and they so long remain with the society. They promise him in addition the benefits of school and of church, and they adopt him as a member of the society. He, the joining member, parts with his individual property to have, with others, a joint interest in the common property, and this common property, under the articles of agreement, is pledged to him for the performance by Rapp and his associates of all their covenants to support and maintain and school and clothe and feed him and take care of him in sickness and in health.

Thus, under the authorities cited *ante*, there cannot be any *resulting trust.* The agreements not only negative the

intent of a resulting trust, but the valuable consideration forbids it also.

So, too, a glance at the purpose of these agreements and the working out of their covenants forbids any idea of a resulting trust or a base fee.

The property of each joining member is given to Rapp and his associates in fee simple, as we have seen, and are at the full disposal of the superintendents of the community, so that a full and absolute title to the same can be made by its sale or purchase.

From 1805 down until this date the society has largely engaged in all kinds of trade and commerce. They have built and run glass mills and iron mills and saw mills, made silk, worked cotton, ran dairies, made whiskey, made beer, built railroads, were in the oil business, in the coal business—indeed, covered almost all the branches of industry in Western Pennsylvania; and from these enterprises, as the master's report shows, probably nine-tenths of the acquisitions of the society arose. The means of engaging in these enterprises primarily were from the labor of the individuals composing the society, on the property of the society, and the raising and sale of all kinds of products of the soil.

How is it possible from these facts to dream of a conditional or partial estate only vested in Rapp and his associates, which, on the termination of the society, is to revert to the grantors?

PROPER GRANTEES.

It is claimed that the society did not take a good title under the agreements, because a voluntary unincorporated association cannot be the grantee; but this rule, it is apparent, has no application to the facts of this case.

The agreement of 1805 is made between

> "the subscribers of the one part, and George Rapp and his associates of the other part."

Here the George Rapp is a well known person, and his associates are defined by the persons who signed the agreement of 1805, so that there is no uncertainty as to grantees. Even if they did not thus designate themselves, it was a mere question of fact as to who the associates of George Rapp were, and the grant then would be to Rapp and those associates thus defined.

The covenants are not only by the subscribers to Rapp and his associates, but Rapp and his associates also covenant with the subscriber.

The agreement of 1821 is also between certain persons of the one part,

> "and George Rapp and his associates of the other part."

This speaks of the association as a defined community already in existence; and the desire of other persons to join; and George Rapp and his associates forming the association are the grantees in the covenants, and are also the grantors in other covenants for support and maintenance to the joining member.

The agreement of 1827 alleges that:

> "An association or community has been formed by George Rapp and many others,"

based on certain propositions, and then follows:

> "And, whereas, it is necessary to the good order and well being of said association that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

Therefore, that agreement was made, and it is between the individual of the one part, and

> "with the said George Rapp and his associates"

of the other part.

The grant is to George Rapp and his associates and their heirs and assigns, and George Rapp and his associates covenant to and with the individual for his support and maintenance. All the members in 1827 signed that agreement, and therefore the associates of George Rapp were known and defined by the very agreement through and by means of which the individual conveys his property and becomes a member of the association.

The grantees are, therefore, well defined and known persons.

See also supra, pages 217 & 223.

PERPETUITIES.

The rule of law is that lands cannot be limited in any mode so as to lock them up from alienation beyond the period of a life or lives in being and twenty-one years.

This court defined it in Auld vs. the Washington Hospital, 95 *U. S.*, 312, as follows:

> "A limitation of property which renders it inalienable beyond the period allowed by law. That period is the life or lives in being and twenty-one years more."
>
> *1st Washburn on Real Property*, 115.

In Pulitzer vs. Livingston, 89 *Maine*, 359, the question is most elaborately considered and numerous authorities quoted. The conclusion reached is that if the estate is vested, and the persons in whom it vests may freely sell, the rule does not apply.

It is the *locking up* of the property that is forbidden; the limiting the grant so that the grantee cannot at any time within the prohibited period sell the property.

Instead of any of the agreements of the Harmony Society locking up the property so that it could not be sold, they are full of the idea of the free alienation of the property by the agent, Frederick Rapp, and then Henrici and Baker, the sub-agents under George Rapp, and then the trustees under the agreement of 1847.

In the most explicit manner, the powers creating the agents, as see *ante*, the power of attorney to George Rapp gave the fullest authority to sell all the property, real and personal, by the agent.

The agreement of 1847 in a still more pronounced manner gave such powers to the trustees. They were authorized

> "in their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and terms in the prosecution of the business. * * * * The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names." * * *

Instead of the Harmony Society locking up real estate from alienation, these agreements and appointments of agents, and especially the agreement of 1847, in the broadest and most liberal and unrestricted manner gave to the agents and trustees the power at any time to sell and convey. There is not only this affirmative grant of power, but there is also an absolute negation on the face of each of these agreements of any idea of restriction of alienation.

The trust in favor of the society is for the joint benefit of all of the members of the society, *while* members and *as* members. It is a trust which the members may at any time terminate. It does not pretend to be indestructible. As the society is composed of its live members at any one time, they may, whenever they choose, terminate the trust, dispose of and change the trustees or sell the property, and this power of theirs is totally prohibitory of the fundamental idea of a perpetuity, *i. e.*, that property is tied or locked up and prevented from being alienated.

All of these questions have been considered and passed upon by this court in the Goesele vs. Bimeler case; by the Supreme Court of Maine and of Massachusetts, and by the Circuit Court of the United States in the cases hereinbefore cited, and all have denied the propositions of the appellants we are now considering.

We especially call attention to the language of this court in the Goesele vs. Bimeler case, 14th *Howard*, p. 609, denying the proposition as to a perpetuity.

The question there, in the opinion of the court, is tersely stated thus:

> "Do the articles constitute a perpetuity? We all think they do not."

See, also, the consideration of these questions in the master's report, and especially his citation of authorities as to the certainty of the grantees and the power of an unincorporated association to take a grant. (Record, pp. 90 to 94.)

SOCIETY AGAINST PUBLIC POLICY.

In the Nachtrieb case, heretofore considered, and as reported in 3d Wallace, Jr., as we have seen, it is said that the morals of the society were unquestioned; vice and immorality were strictly prohibited and punished. During all its existence up to that time, not one of the members of the society had ever been charged with a crime.

The bill also alleges:

Paragraph 8:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

It seems incredible that a society whose impress upon the public is so favorable should be forbidden by law. Without a single member ever charged with a crime, with its "sincere advocacy of the equality of man, its espousal of the highest principles of Christianity," and "its honest and benevolent administration of all public functions," how could it at the same time be the hideous organization our opponents now allege.

Nowhere in any of the agreements will any clause be found advocating celibacy or forbidding marriage. True, to a great extent celibacy was practiced and believed in, but this was

the voluntary action of each member. Each might at any time leave the society and contract marriage if he chose.

Without elaborating, we refer to the cases we have cited as fully meeting and overruling this ground of objection.

The Supreme Court of Pennsylvania, in Schrieber vs. Rapp, 5 *Watts*, 360, affirmed the court below, which held that

> "there is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts or public policy."

In Goesele vs. Bimeler, 5 *McLean*, 230, affirmed by this court in 14th *Howard*, Judge McLean said:

> "That in the absence of all fraud and unfairness this was a *bona fide* and legal contract cannot be doubted."

The Supreme Court of Maine, which elaborately considered this point in Waite vs. Merrill, 4 *Maine*, 90.

The Supreme Court of Ohio, in Gaely vs. Separatist Society, 13 *Ohio St.*, 150.

If this objection to the Harmony Society could be sustained, what possible good could it do the appellants, and how can they possibly raise it? Their ancestors, through whom they claim, signed the agreements and were members of this obnoxious community. How can those ancestors or those claiming through them condemn their own agreements

and their own community and seek equitable relief on that ground?

See also supra pages 226 - 227.

BRIEF CONSIDERATION OF THE NATURE OF HARMONY SOCIETY.

But why may not individuals join together for mutual benefits and agree to submit to and be governed by certain of their own numbers, so far as their property or conduct comes within the scope of the joint agreement? Is it not a usual provision in all partnership articles, and does it not inhere in every corporate organization? And what fundamental law is there which forbids the governing board to fill vacancies in its own numbers, always, however, out of the membership in the society?

It is noticeable that these agreements of the Harmony Society do not establish as a condition of membership any particular system of belief. Protestants and Catholics and even infidels have from time to time belonged to it. There was no test oath or pledge, and while Christian fellowship was the foundation of the society, and to fulfill the will of God the desire of its members, here all men, Jew and Gentile, Infidel and Christian, could unite.

And just as there was no test oath or pledge as to religious belief, so there was no attempt to control the liberty of the individual. At any time he might leave the society.

Under the agreement of 1827 it was the patriarchal form of government, and the bill alleges (paragraph 1):

> "The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules of governing said society were made by him, the members thereof having no voice in their enactment."

This patriarchal form of government modified in 1847, but still a patriarchal form, where nine members of the society were chosen as the patriarchs, continued until this bill was filed in 1894, and during all that period the bill alleges (paragraph 8th):

> "That the Harmony Society, from the period of its inception until a recent date (1890) adhered rigidly to its plan of government and became *illustrious and highly respected by reason of its sincere advocacy of the equality of man*, its espousal of the highest principles of Christianity, and its *honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Pennsylvania.*"

The voluntary practice of celibacy has been from the period of Christ. The negation of the yearnings of the flesh; the dedication to God of all one's person and energies; the idealization of life until the atmosphere one lives in is seraphic and angelic, to all these practices and belief, thousands have, thousands do, dedicate themselves. Heretofore poetry and music and song *in excelcis* praised these devotees. No written law forbade them; no decision of the court so held the unwritten law to be. It would be a new thing under the sun in our free country where one's conscience is the sole judge of his religious belief to condemn as contrary to the policy of our laws so good, so pure, so beneficial and helpful an association as the Harmony Society.

THE PROPERTY IS NOT HELD FOR A CHARITABLE USE.

In the seventh assignment of error the appellants allege that the society was not organized "for any religious, scientific, charitable or literary purpose," and to this we agree.

(1) The property now sought to be divided is in a small sense the gift of any one, but, on the contrary, is the result and accumulation of years of labor and trade.

A charity necessarily implies a gift or bounty.

Bispham's Equity, sec. 123 (4th Edition.)

(2) The agreements under which the property is accumulated adopt each contributor as a member, and by mutual and dependent covenants the adopted member agrees to work, and in consideration thereof he is to be fed, clothed, housed, etc., so long as he remains in the society.

There is, therefore, no distribution of property, but a *quid pro quo*. The property is not accumulated for a charity, but for the persons who compose the community.

See Grier, J., opinion, Nachtrieb's case, 3 Wallace, Jr.

What the member gets is a consideration to him for his labor, etc.

Kain vs. Gibboney, 101 *U. S.*, 362.
Corks vs. Manners, *L. R. 12 Eq.*, 574.
Jackson vs. Phillips, 14 *Allen*, 539.
Swift's Extrs. vs. Beneficial Society 73 *Pa.*, 362.
Marsden on Perpetuities, page 298.

(3) The only persons interested in the property, or to receive benefit therefrom, are those who are members of the society and who sign the written agreement, and thus they take, not as charitable recipients, but as worthy members of the Harmony Society.

Bispham's Equity, sec. 124.
Perry on Trusts, sec. 697.
Babb vs. Reed, 5 *Rawle*, 151.
Swift's Executors vs. Beneficial Society, 73 *Pa.*, 362.
Goesele vs. Bimeler, 14 *Howard*, 229, 230.
Schrieber vs. Rapp, 5 *Watts*, 351.
Nächtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66.
Spiedel vs. Harmony Society, 120 *U. S.*, 377.

The conclusion is plain and undoubted.

No one of the appellants ever had or has now, or would have if the Harmony Society was dissolved, any right *whatever* to participate in the distribution of the society's property.

The members who at any one time comprise the society may distribute among themselves all the property of the society; of course, providing for payment of debts.

No one else than these members, at any time or in any contingency whatever, may participate in the distribution of its property.

NATURE OF THE TITLE THE TRUSTEES AND MEMBERS OF THE SOCIETY HAVE.

The original deeds for the property of the society were all made in fee simple to Frederick Rapp and his heirs.

In no instance was there any trust or use declared on the face of the deed. The title was absolute and unqualified in Frederick Rapp.

Frederick Rapp, as we have stated, did declare that he held the property in trust for the society by a separate paper.

All the other conveyances to George Rapp, who suceeeded Frederick Rapp as the agent, and then to the different trustees appointed under the agreement of 1847, gave an absolute title, in fee simple, and without any trust declared.

The title to all the real estate is conveyed to the trustees in fee simple. It is, in each instance, an absolute unqualified estate in fee, without limitation of any kind. It is not conveyed upon any condition of any kind. No one of the members of the Harmony Society ever conveyed, so far as this case shows, any real estate to the society, but, if any one did, it was just as absolute a conveyance, as shown by our analysis of the different agreements.

The grantors of all the real estate parted with all their title to the tracts of land conveyed. They were conveyed to the trustees and their heirs, or to Rapp and his associates and their heirs.

It is true that, beginning with the original declaration of Frederick Rapp, in 1834 (Record, vol. 4, p. 619), followed by George Rapp's appointment in 1834 (Record, vol. 4, p. 613), and this by the agreement of 1847 (see page 312, appendix to this brief), the agent and trustees in each instance declared that the property conveyed to them

> "is and shall be deemed the common property of said society."

The

> "*said* society"

as the agreements all show, were the persons who were in membership and constituted part of it.

McKennan, C. Judge, in the Speidel case, 15 *Fed. Repts.*, 753, speaking of what this trust was, and for whom, said:

> "The trust alleged here was *instituted for the equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious as well as secular policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

Mr. Justice Gray, in the same case, said (120 *U. S.*, 377):

> "The trust on which Rapp and the defendants (the trustees) as his successors held the common fund of the Harmony Society is described, in one place in the bill, as for the members of said families, and the contributors of said fund, and for their common benefit, that is to say, as is clearly explained by what goes before, in trust for their common benefit *as a community*, living together *in the community*, working for the community, subject to the regulations of the community and supported by the community."

The Harmony Society, composed of those who at the time were its members, were the *cestui que trustents* of the trustees, in whom stood the absolute fee simple legal title to the property. Each one of these members, so long as, *and only so long as*, he was a member was one of the *cestui que trustents*. Whenever he ceased to be a member the *use* shifted from and left him, *because* the very foundation and condition of its existence were taken away. When one became a member of the society, the *use* for him sprang up so as to include him among the members. When he ceased to be a member the very agreement he signed, by which he became a member, terminated and ended the trust or use.

In 2 *Washburn on Real Property*, page 669 (fifth edition), title "Shifting Uses," he uses, as an illustration of them, as follows:

> "An example of a shifting use, as given by the courts, is a grant to incorporated proprietors of land on which it was intended to build a church, *habendum* to said proprietors, etc.; and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built thereon by said proprietors, the use would legally shift to those who should thereafterwards become pew holders."

In the society's agreement of 1847 provision is made for the admission of future members by the Board of Elders. (See Article III., page 310, of this brief.)

Under the original agreements, always, by consent of all the members, new members could be admitted.

To the trustees, say a parcel of land is conveyed on April 1st, 1870; they hold the same in trust for the members of the society as such, so long as each continues to be a member.

Each member was and is a *cestui que trust.* As a part of and a member in this society each had such a title as would enable him to compel the use of the real estate for the purposes of the society and the fulfillment of the covenants contained in the written agreements of all the members.

When a new member came in, a use sprang up for him, and he became, so long as he was a member, one of the *cestui que trusts.*

When any one left the society and thereafter ceased to be a member of it, the use or trust he had shifted from him to his fellow-members of the society. As Judge McKennan says *ante* the trust was

> "for the equal and exclusive benefit of the members of the Harmony Society."

As Judge Gray, in the same case, said, *ante:*

> "in trust for their common benefit as a community, living together in the community."

See, also, *Kerr on Real Property*, vol. 2, sections 1662, 1663.

Quite an instructive case is that of Second Congregational Society vs. Waring *et al.*, 24 *Pickering*, 304, which was again considered in the case of Packard vs. Ames, 16 *Gray's Reports*, 328.

The opinion in the latter case is short, and we quote it as follows:

> "BIGELOW, C. J. The construction of the deed from Joseph S. Packard to Micha Packard and others, proprietors, was considered by this court in North Bridgewater Congregational Society vs. Waring, 24 *Pick.*, 304. It was there held that an estate in fee,

vested in the grantees to the use of the proprietors of pews therein designated, the use shifting to such as should thereafterward become pew-holders. No intimation was there made that the conveyance was on a condition subsequent. Nor, on careful consideration of the terms of the grant, can we see any valid ground for holding that such is the true interpretation of the deed. There are no apt or proper words to create a condition; there is no clause of reentry or forfeiture. The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely that the grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary, it has always been held that such a grant does not convey a conditional estate, unless coupled with a clause for the payment of money or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition. *Co. Lit.*, 203a, 204a, 204b, 214b. *Shep. Touchst.*, 123, 124, 133; Cowper vs. Andrews, *Hob.*, 41; Norfolk's Case, *Dyer*, 138b. Exceptions sustained."

The Supreme Court of Pennsylvania in Methodist Church vs. Old Columbia Co., 103 *Penna. St.*, 614, cites and approves this case.

Survivorship in a joint estate exists in Pennsylvania wherever the parties so provide either by express words or by fair implication from the words used.

Jones vs. Cable, 114 *Penna. St.*, 586.
Arnold vs. Jack, 24 *Penna. St.*, 60.

In each of these articles we have considered, in plain words, the member who leaves or who dies loses all his right of membership and all his joint rights with the other members to the society's property. Or perhaps it is more correct to say that his estate is necessarily limited to the period of his connection with the society—and when he dies or leaves this estate terminates. It ends and the common property *theretofore* owned by say the thirty members who constituted the society now is absolutely owned by the twenty-nine members who at present constitute it.

SECOND QUESTION.

HAS THE HARMONY SOCIETY BEEN DISSOLVED?

The master and the court below answered this question in the negative. The society is not dissolved. It is just as truly a society to-day as it was in 1827, or 1836, or 1847. The agreements do not provide for any certain number of members to make a society, and seven is as good as seventy for that purpose.

There is a peculiar burden upon the appellants to induce this court to reverse such finding of facts as above referred to. The master went at great detail into all the evidence and found against the dissolution. So did the Circuit Court below, when it affirmed the master's findings. So did the Circuit Court of Appeals when it affirmed the same findings.

Surely to reverse *both* a master *and* the two courts below would require a *palpably plain* case of error on their part.

But this court, if it examines the evidence, will be struck with the barrenness of it to prove a dissolution. It, indeed, proves just the contrary.

Restating the question it is as follows:

(II.) Has the Harmony Society been dissolved

(*a*) By mutual consent of its members, or

(*b*) By the abandonment of the purposes for which it was formed?

When the plaintiffs began to take testimony in the court below it was before an examiner who had not the power to rule on questions of evidence. Counsel differed widely on what was admissible, and eventually both sides submitted to the Circuit Judge Acheson, who wrote out an order defining the limits of the testimony, among other things to the proof of the alleged dissolution of the society either

(*a*) By the common consent of its members, or

(*b*) By the abandonment of the purposes for which it was founded.

We therefore inquire:

(*a*) Has it been dissolved by mutual consent of its members?

The bill alleges this, paragraph 26; the answer denies it. The burden is on the plaintiff to prove it.

The master and the courts below found against it.

There is not one particle of proof to sustain it. No witness testifies to it.

On the contrary, there is proof that it is in full life; that it now exists as it has for over seventy years; that it differs only in those things where time and new discoveries and inventions have worked changes in all our modes of life. The steam railroad, the telephone, natural gas, etc., have necessarily worked changes in all our lives—less in them at Economy than elsewhere. A society with ten or twelve men, or less, could not work the farms, or keep open the shops, etc., as if it had fifty or one hundred men.

(*b*)—Has the society abandoned the purposes for which it was organized, and thereby become dissolved?

It will be noticed this requires an examination *in limine* of

(1) What were and are the purposes for which the society was organized?

(2) What would constitute such an abandonment as would work a dissolution of the society?

(1) What were and are the purposes for which the society was organized?

The answer to this is found in the agreements of 1805, 1821, 1827 and 1836. There and *only* there are the purposes for which the society was formed definitely and affirmatively stated. The main object and purpose was the accumulation of property by the society and the bodily support and maintenance of all its members and their families, and this was to be accomplished by the labor of their hands and the use of the joint property. All the four agreements emphasize this, all the covenants bear upon it. The surrender of individual property and the labor of the individual were the consideration for the society promising his support and maintenance. The joint property was the means of insuring this.

So far as regards the rights of property, the interest each had in the common fund, and the rights of the society to that fund—these articles minutely and carefully regulate them, and it was their chief and main purpose so to do.

It seems clear that one of the purposes of the society in the acquisition, possession and use of property was to enable it to fully perform its covenants with the individual for his support, education and maintenance.

The society also intended to accumulate property the disposition of which rested solely in the discretion of the society. Thus all the agreements are specific in two respects:

(*a*) Each member adds his individual property to the joint property of the society.

(*b*) Each member covenants to labor with his own hands and those of his family, under the direction of the superintendents, for the benefit of the society.

Thus the accumulation of property was provided for and this accumulation pledged for the maintenance of each member, but what use the members as a whole would make of the corpus of the property, or how or when sell it or divide it was left to its owners, *i. e.*, all the living members at any one time who constituted the society.

As the preface to the agreement of 1827 shows, the members were to live in Christian fellowship, and the chief object of the whole community was the fulfillment of the will of God.

The object this and all other societies seek is to approximate to the fulfillment of the will of God, and this is to be accomplished by the exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and eternity.

What are those *affections and virtues?*

They are not specified.

No special form of religious belief is prescribed (nor was any declaration of faith ever required for admission to membership).

The most that can be definitely said is they are those not inconsistent with Christian fellowship, as derived from the Holy Scriptures, and the practice of which tend to the fulfillment of the will of God.

Patriarchal government and community of property only are defined.

Taking the agreement of 1827 as a whole, it founded the society for the accumulation of property which was to be owned in common, *i. e.*, community of goods, and gave it the patriarchal form of government, and the members were to practice the affections and virtues growing out of Christian fellowship, and which tended to the good of the members in time and eternity.

The society was not a church or religious organization, but a community of kindly fellowship, having all property in common, and governed by a patriarch, whose will was the supreme law; and the affirmation of approximating to the fulfillment of the will of God by the practice of virtues and affections which tended to the eternal and temporal happiness of the members was a broad, general assertion, not to or for any form of worship, but as a rule for daily life.

Two of the principles are enumerated.

The Patriarchal Government, when George Rapp was the sole patriarch, which was changed by the agreement of 1847, when George Rapp died.

Community of property, as in the days of the apostles.

This is still unchanged. It necessarily subordinates the individual to the society, and, as the subsequent portions of the agreement of 1827 show, gave him no separate individual interest in the common mass which he could sell or transfer, and yet gave him, in one sense, a lien on the whole mass of property to insure his support and maintenance.

It was left for the patriarchal government, succeeded by the Board of Elders, from time to time, to take such action as might be deemed necessary or be deemed expedient to repress practices violating the rule of Christian fellowship and to suggest others which might tend to its practical triumph.

The agreement of 1847, besides giving to the Board of Elders the entire internal management of the Harmony Society, expressly gave it the power

> "to establish regulations for the maintenance and improvement of the morals of the society."

One of the incidents of the communism of property, as adopted in the days of the apostles, was that to each was given out of the common fund as he had need. The communism adopted by the Harmony Society, therefore, included the temporal support out of the common fund.

This support and maintenance was one of the *main purposes* of the society.

Unless the body was kept, nourished and maintained, and the mind fed and enlightened by teaching, neither temporal nor eternal happiness was possible. And yet, to do this, it was necessary to use the common property.

It would then be safe to conclude that the main and chief purposes of the Harmony Society were the accumulation of property and the bodily and temporal support, nourishment and education of each of its members.

The Harmony Socieey is not a religious organization or church.

The church, in its popular sense, was founded to propagate and preserve the religion of Christ, and whatever may be its sub-divisions, it prescribes the worship of Christ and God, and exists for that.

Religion is the recognition of God as an object of worship, and this may appear or exist in all the forms of worship which the varying beliefs of ages have created.

But to be a religious body, or a church, is necessarily to exist primarily for the worship of God by some set ceremonial and service.

This is the prime, and, indeed, the sole purpose, of the religious body, and the Mortmain statutes were passed to prevent vast quantities of property being tied up to further certain religious propaganda.

Now, the agreement of 1827 does not adopt any religion, or prescribe a form for the worship of God, or state that as its purpose. Its main purpose was to secure the maintenance and support of its members—not to determine upon some form of religious belief, and organize for its propagation and preservation.

All human government is an approximation to the fulfillment of the will of God. But no human government is considered as a religious body or a church.

The fact, then, that the fulfillment of the will of God is an object of this society, should not blind or mislead one to its main purposes, which were, as the details of its agreement shows, the organization for, and the acquisition of, property

to be used for the maintenance, support and education of its members.

Such a society could acquire and possess property without a limit, while the Mortmain statutes step in and limit acquisition in the case of church and religious societies.

Inside of the society, and one of its instruments, was a church, but the church was not the society, nor yet the society the church.

Thus, in Article III of the agreement of 1805, it speaks of the

"church and school."

Again in Article IV of the agreement of 1827.

Again, the agreement of 1847 speaks of appointing spiritual leader and having authority as to

"church discipline."

They all recognize the church a body, existing just as the school, but neither church nor school was the society or aught else, except one of the means of accomplishing one of the purposes of the society.

In Burtt vs. The Oneida Community, 137 *N. Y.*, 346, the Court of Appeals defined the purpose of that society as follows:

> "It is not important to consider the moral and religious teachings of the community, which were manifestly potent influences during the formative period of its existence. What principally concerns us now was its status as a business compact, and we must stop when we have construed the contract relation of the parties and determined the rights acquired by virtue of a membership therein.
>
> "In this aspect the main purpose of its promoters was evidently the propagandism of certain com-

> munistic views as to the acquisition and enjoyment of property and the endeavor to put into practical operation an economical industrial scheme which should embody and illustrate the doctrines which they held and inculcated. Necessarily the basic proposition of such a community was the absolute and complete surrender of the separate and individual rights of property of the persons entering it; the abandonment of all purely selfish pursuits and the investure of the title to their property and the fruits of their industry in the common body, from which they could not afterwards be severed or withdrawn except by unanimous consent."

Judge Grier, in the Nachtrieb case, defining the difference between the corporation organized for charitable purposes and the Harmony Society, said:

> "These accumulated for themselves; they have, by joint labor, accumulated property of great value, which they hold as joint owners."

(2) WHAT WOULD BE SUCH AN ABANDONMENT AS WOULD WORK A DISSOLUTION?

Not stopping to insist on what we have already proven, that all the live members at any one time constitute the society and hence can make such changes as they see fit in the society and the agreements which govern it, and no one can lawfully complain of it, let us assume that some outside person could complain, and see what the result is.

It is obvious that the Harmony Society agreements were between all of the members constituting the society. Each member was a contracting unit. In consideration of the unit surrendering to the society all his property and all his labor,

the society agreed to support him and his in health and sickness and for his and their lives, so long as they were in the society.

Each member can insist upon the futfillment of this contract, and the entire mass of the property is marked with that burden, and without the consent of each that property cannot be taken by one or all of the others and divided among them. What all the members but one cannot directly do they cannot indirectly do. If directly, by vote and act, they cannot take and scatter the common fund, they cannot accomplish indirectly by evil conduct.

The abandonment of purposes or principles which would take from each subscriber this lien he has on the common mass of the property, and would dissolve the society and scatter its assets, so that no one of the signing members could any longer have a society, it could compel to keep its covenants, or a common mass of property he could rely upon for his support must necessarily, therefore, involve all the members; not merely a part, but all.

If a third or a half abandoned, and the other half or two-thirds did not, but kept the faith, surely the latter would not be punished for the sins of others.

Surely because, say, the one-third or one-half were false to their written contract and promise to practice the virtues and affections of Christian fellowship, which tend to man's temporal and eternal happiness, this would not convict the other two-thirds or one-half who had not been false, but had faithfully kept their contracts.

Remember the contract is between each individual on the one side, and all the other members of the Harmony Society on the other.

Because some of the individuals kept not their part of the contracts is no reason why all the rest of the individuals and the Harmony Society should be prevented from keeping theirs.

The abandoment, then, would have to include all the members.

The things abandoned would be the purposes of the society.

That is, all the purposes.

Not part of them, but all of them—that is, all of the main things for which the society was organized.

It will be noticed that *no one of the members* asserts a dissolution, or asks for one, or alleges that the purposes of the society have been abandoned.

The allegation is made by alleged heirs of deceased members, and they ask the court to decree and adjudge that:

(*a*) There has been such an abandonment of purposes

as

(*b*) Should on their petition make a dissolution.

The abandonment must be utter and entire.

Not a temporary lapse, even if repeated, but a continuous and determined line of conduct, showing the settled purpose of wholly turning away from the original purposes of the society, and devoting the common fund to alien, incongruous and hostile purposes.

There was no abandonment before 1890.

The bill alleges this in the most direct and positive manner.

Paragraph 8th of plaintiffs' bill asserts:

> "*That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious* and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th:

> "That during the year 1890, after a long period of *prosperity* and *complete harmony* in said society, began a second conspiracy." * * *

The present bill was filed on June 27th, 1894.

The abandonment then was after 1890, and between 1890 and June 27th, 1894, because when the bill was filed the allegations in it were (paragraphs 25, 26) that the Harmony Society *then was* dissolved.

The abandonment of purposes which worked this distructive effect in a society founded in 1805, and surviving the De Leon conspiracy of 1831, when 175 persons left and were paid $105,000.00, and the different litigations the society has had, was, the bill alleges, effected between 1890 and 1894, *and this with the admitted facts staring them in the face, that in 1890 and 1892 all the members of the society formally reaffirmed its ancient constitution and agreements.*

See those agreements.

Has the plaintiff shown such an abandonment of the purposes for which the society was organized?

Attention is just now called to the following:

The plaintiffs have not shown an abandonment by showing any written contract or avowal of the present members so to do. On the contrary, the last general articles of agreement in 1890 and 1892, signed by all the then members, distinctly affirms and re-establishes the agreement of 1847, which re-affirmed those of 1827 and 1836.

Thus the agreement of April 30th, 1890, signed by Henry Feucht and Julius Stickel, and every then member of the society, expressly affirmed:

> "We do hereby solemnly recognize, approve, re-affirm, and continue the articles of agreement and compact of our association entered into at Economy on the 12th day of August, 1847, and recorded in the Recorder's office of Beaver county, as set forth in the preamble hereto, *and declare the same to be in full force as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.*"

Referring to this agreement of 1847, we find in its first article it expressly affirms and continues the agreements of 1827 and 1836.

So in the spring of 1890, in a formal and solemn manner, every member of the society joining, we have a reaffirmation and republication of the agreement of 1827.

By another agreement, dated December 20th, 1892, all the members (except the Feuchts) said that they do

> "*hereby ratify and confirm* the articles of agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890." * * * *

This was the re-publication in December, 1892, of the agreement of 1827.

The appellants do not pretend to show any action *of the society*, or of its Board of Elders, formally turning away from the old things and kneeling unto alien gods.

Aside from the change in the industries of the society, and the state of its finances, the entire scope of appellants' evidence on this head is that certain individuals were guilty of immoralities, and that the Board of Elders, on complaint made, neglected to control the evil.

The master, in his report (Record, 173 to 185), has fully covered this question of abandonment in all its details and all the testimony on it, and on p. 185 he states his conclusions as follows:

> "The master, for the reasons hereinbefore set forth, finds that there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill."

This was approved and confirmed by the Circuit Court of the United States and the Circuit Court of Appeals, and as none of the testimony is printed from which the incorrectness of this conclusion might be argued, the finding stands as a fact in this court and relieves us of any discussion of the same.

Whether there has been an abandonment of the purposes

of the society is a question of fact. Especially is this so under the testimony in the case where the allegations of the appellants were flatly denied by the appellees, and the master found against the appellants.

We hereafter consider more in detail certain acts which the appellants still urge as proof of abandonment, but as to the main charge itself in the bill and under the evidence we refer to the master's report as conclusive. (See Record, page 138 to 196).

UNION COMPANY.

The sale to the Union Company of the home tract of land at Economy, and the Allegheny county land, it is asserted in the 20th paragraph of the bill, is an attempt on Duss' part

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Plaintiffs allege it was not competent for the trustees to make this conveyance, and it is a breach of trust and invalid, and really constituted a dissolution of the society.

The facts are, that after the debts of the Economy Savings Bank were paid, by the society borrowing large loans on long time, new troubles arose. Such suits as the present were threatened, which might involve the title of the society to its real estate, and prevent its sale to raise money.

Then, escheat proceedings were threatened, which would still further complicate the title. In addition, it was desirable to have the surplus value of the real estate, over and

above the mortgage, available for emergencies. To put the real estate where it could the more readily be sold, and to have its surplus value thus available it was advised that a corporation be formed capable of taking the real estate, and to it should be conveyed the real estate, and the stock (all of the stock) of the corporation should be owned and held by the trustees for the Harmony Society.

All the members of the society were consulted and all agreed to the expediency of the proposition, and accordingly, on April 11th, 1894, all signed an agreement (Record, pp. 112, 113), which, *inter alia*, provided as follows:

> "We, the members of said Harmony Society, do each hereby express our consent, wish and request that John S. Duss and Gotleib Reithmuller, the present trustees of said society, shall forthwith sell, transfer and convey to the Union Company, a corporation created and duly authorized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments situated in Allegheny and Beaver counties, Pennsylvania. * * * The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society in accordance with and under the terms and conditions of the articles of association of said society and the ratifications and modifications thereof."

The real property in Beaver and Allegheny counties was so conveyed and the stock issued to the trustees. No other of the real or any of the personal property was so conveyed.

The whole number of shares of stock was 7,950 issued to them, and 50 shares were issued to others to make them eligible as directors. But each one so receiving shares did so without paying anything therefor, and at once endorsed in blank his certificate and deposited it with the trustees. Thus, every share of stock was and is owned by the trustees of the Harmony Society and held by them under and in accordance

with the articles of agreement hereinafter referred to. The real estate conveyed was thus paid for by the shares in the corporation, and this stock became the property of the society.

Really and in truth, the Union Company holds the naked, legal title, for the use and benefit of the Harmony Society, because that society owns all the stock in the company.

Technically, the trustees have converted realty into personalty, and the personalty is now held by them in place and stead of the realty. The property is not distributed among the members of the society, but is held upon the same trusts, and by the same trustees, as was the real estate.

Have the trustees, in so doing, abandoned the purposes for which the society was founded, or violated the trusts confided in them?

No one of the articles of agreement pretend to determine how the money of the society will be invested—whether in realty or personal property.

The agreement of 1847 provides as follows:

> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to wit:
>
> 1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact and at law, and generally to transact all the external business affairs of the society.
>
> "2nd. To make donations to seceding and excluded members, and the representatives of those who are

deceased, and for such benevolent and charitable purposes as they deem prudent and fit.

"3rd. The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by, or belonging to, the said society, and for this purpose to execute deeds of conveyance, in fee simple or otherwise, in their joint name, but the proceeds of all such sales shall be held in trust for the society."

This, undoubtedly, gave the trustees the most unbounded power to carry on all sorts and kinds of business, and to convert real estate into personal property, or personal property into real estate. The conversion was in their discretion. They might do so when it was deemed advisable.

To do so violated no trust. It was the legitimate exercise of undoubted powers.

When it is recollected that every single member of the society gave his or her written consent to such conversion (see Exhibit 80), the objection now raised by outsiders seems ridiculous.

Why might not all the then living members of the society agree, as they did, that instead of holding the lands at Economy in the name of the trustees, provided for in the agreement of 1847, they would convey the title to a corporation and hold all the stock as the joint property of the Harmony Society? Who is harmed by this?

How is it in any way inconsistent with any of the articles of agreement or in any way an abandonment of the purposes of the society?

Ever since the society was formed it has been buying lands, and thus converting personalty into realty, and it has

also been selling the realty and converting it into personalty. It did this on a very large scale when it sold all its real estate in Butler county, Pennsylvania, for money. It did it again on a large scale when it sold all its real estate in Posey county, Indiana, for money.

Then, too, the society in its many different business enterprises was constantly buying and selling real estate. Notably, it bought several farms and laid out what is now a very large and flourishing borough, Beaver Falls.

It sold off in lots all this property.

So, too, in its lumber, coal and oil business, it largely bought and sold real estate.

This conversion of the realty into the stock of the Union Company was not followed by a distribution of that stock among the members of the society, as it was in the Oneida Community case. If it had been, we doubt not the then living members, all agreeing, could so have done. But it was not done.

The Zoar Society in Ohio directly conveyed all its property to a corporation raised for it. Yet in all its litigation, in the cases reported and which we cite *ante*, was it ever supposed *that* terminated the existence of the society or was an abandonment of its purposes?

The master found all the facts in his report (see Record, pp. 112 and 114 and also pp. 160 and 163), and on p. 163 of the record he sums them all up as follows:

> "The master therefore finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society and did not terminate it; that it was not a breach of trust on part of the trustees; that it was competent for them to make the conveyance; and, further, that it was not an abandonment of any of the purposes for which the association was founded."

This was affirmed by the Circuit Court and the Circuit Court of Appeals.

PRESENT PAUCITY OF MEMBERS.

When the bill in this case was filed there were living members of and in the society sixteen (16) in number. When the master's report was filed these were reduced to—— members, and at the present time death has reduced the membership to eight (8).

We treat hereafter fully of the causes which led to the withdrawal of many members. The Feucht litigation, the immense debt of the society—over $1,500,000—threats of state proceedings for escheat, and of suits like the present, not only induced many to withdraw, but since the Feucht bill was filed not a single person has presented himself for membership.

But we wish now to treat of the one question only. Do the articles of agreement or the purposes of the society require any given number of members?

The master has found the undoubted fact that

> "the remaining members of the society, although reduced in number by deaths, still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12, 1847; the Board of Trustees and the Board of Elders still continue their organization and attend to the affairs of the society."

The number of the Board of Elders is reduced to eight, and does include all the present living members of the society, but the appellants should not complain of this, because heretofore it was the exclusive nature of that board they objected to.

Remembering now that the main purpose of the society was the accumulation of property with which to support, maintain and educate its members, why may not eight do this as well as eighty? The subsidiary rules of conduct were those promoting Christian fellowship, and why may these not be observed as well—indeed, better—by a few than by many? The fulfillment of the will of God can certainly, within limits, be as effectually done by the few as by the many. The few will not need the large shoe shop or bakery or general store, but they get their requirements just as well by other methods. The number of acres tilled will be less, but so will the necessity of tilling more be reduced. All the members will be as well cared for, as well taught in school and church, better looked after than when the membership ran to hundreds. The society still owns all the property and the individual members still are bound to obedience to the Board of Elders, and in return the society is bound to support and maintain and clothe the individual member, as well in sickness as in health, to give him the benefit of school and church and look after his family. All this a society composed of eight will do as well as one of one hundred—indeed, will do it better, for more attention can be given to each

member. Trade and outside business may be as largely carried on as ever, but whether it is or not is a matter for the society. Its experience in the file works, the cutlery works and the bank cost it over one million dollars ($1,000,000).

No one of the agreements called for any special number of persons as necessary to organize or continue the society. Indeed, there is no evidence as to the number of persons who first came over with George Rapp, but certainly they were but few.

If it be argued that numbers are essential, we then ask two questions:

(*a*)—Why so? And what particular figure is it below which the members should not fall?

(*b*)—What portion of any one of the articles specifies a particular number? Please point it out.

What particular number would the appellants fix the membership at?

And what particular virtue do they find in such numbers they so fix?

The number of members has varied from time to time. In 1815, when the Butler county land was sold, there were four hundred and nineteen persons. In 1834, after the death of Frederick Rapp, a power of attorney was given George Rapp, and this was signed by four hundred and two persons. In 1832, when Count de Leon withdrew, 175 members withdrew, leaving —— as the then membership.

In 1847 there were 311 members.

In 1890 there were 45 members.

In 1892 there were 33 members.

In 1894 there were 18 members.

From 1805, when the society was founded, to 1894 was 89 years. Probably in 1894 not a single member of the Harmony Society was alive who joined it in 1805, or was a member in 1821 or 1827. All were dead, and of the membership which then survived, probably not one was a lineal descendant even of any ancestor who once belonged to the society. Yet that these changes were foreseen and provided against clearly appears from all the articles. Each lays stress on the fact that actual participating membership is a *sine qua non* to any one claiming under any of the articles, and he who left or died ended all his claim upon the society and its property. Necessarily, then, the society came under the ownership and control of those in succession. The surplus property the society had not used for the support of its members went to these survivors and the new members taken in. At any time all the live members might dissolve and give away and distribute its property among themselves, but until they did so, and so long as they lived under and in accordance with the articles of agreement, the society continued and lived, and this regardless of the decline in membership.

The master so held, and Judge Acheson, in his opinion (Record, p. 195), said:

> "There has been no dissolution of the society, either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced, but the rights of the society as now constituted are as sacred in the eyes of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact."

The Circuit Court of Appeals used the same language.

WITHDRAWAL OF MEMBERS.

The master has found that the charge of appellants that Mr. Duss caused different members to resign, in order himself to obtain more absolute control of the society, is untrue. He says, p. 155 of the record, that the charge

> "is denied in the answers, is not supported by the evidence and *is not true*."

On pp. 155 to 159 of the record the master treats of the facts of each individual withdrawal, and he finds that in no one of the cases (except the Feuchts and Stickels) did Mr. Duss even willingly consent to the withdrawal, but endeavored to induce the one desiring to withdraw to remain.

Both the Circuit Court and the Circuit Court of Appeals affirmed this, so that it will take *much more* than the printing the form of the releases which each retiring member gave, and which the master and lower court fully considered, to reverse such finding.

We treat more fully of these withdrawals in a connected history of the facts which set forth the good works done by Mr. Duss in rescuing the society from total destruction by the machinations of the very men who instigated the present suit and sought by all kinds of abuse and ill treatment to drive him from his noble stand in defense of the rights of the helpless men and women who then formed the society.

CONSPIRACIES CHARGED IN THE BILL AND THE FACTS REGARDING MR. DUSS.

From the 8th to the 13th paragraphs of the bill the appellants eulogized the conduct of the society from its origin in 1805 to 1890, but allude to the Count de Leon conspiracy of 1831 by which the Count, alleging himself to be a forerunner of the second advent, gained many adherents in the society, the result of which was a division made in 1832, the count retiring with 175 members and about $105,000 in money, the others remaining with George Rapp; and then, 1890, the bill alleges that Mr. Duss and certain confederates organized a conspiracy to admit into the society Dr. Cyrus Teed,

> "the notorious libertine and adventurer,"

who was the friend of Mr. Duss, together with his depraved women whom he calls "angels," and thus turn the celibate society into a free love one.

To accomplish this, it is alleged, Mr. Duss sent to Teed large sums of money, and clandestinely admitted into the Harmony Society intimate friends of Teed; that Mr. Duss also caused to be erected at Economy a new and commodious building, which the society

> "expensively and luxuriously furnished and adorned"

for the express accommodation of the Korish society, presided over by Teed.

These actions of Duss, however, the 12th paragraph of the bill alleges, alarmed the Feuchts, who were members of the society, and the result was that the conspiracy was

> "abandoned and an entirely new and equally destructive plot was then arranged by said Duss with the assistance of other confederates not allied with said Teed."

All of these charges were denied in the answer. The master has found that not a single one of them was true.

Instead of Teed being a friend of Mr. Duss, he was wholly unknown to him.

What Teed's character was, and what his peculiar doctrines and practices were, there is not a particle of evidence to show.

Mr. Duss did not send any money to Teed, and instead of a new house at Mr. Duss' instance being erected for Teed, the evidence shows Mr. Duss opposed the building of the house, and it was erected against his protest, not for Teed, but for the saw mill hands employed by the Harmony Society.

The master concludes his review of all the evidence by finding that the charges

> "are not true, and that there never was any such conspiracy as is charged in the tenth, eleventh and twelfth paragraphs of the bill." (Record, p. 150).

The bill then charges (paragraphs 14 to 24) that when Mr. Duss failed to turn the society over to Teed, he

> "concluded to wreck and dismember the Harmony Society, and to obtain for himself and confederates what he had lost by not colonizing said society as aforesaid."

To accomplish this, the bill alleges, Mr. Duss did as follows: Having entire control of the Board of Elders, he directed that no new members should be elected

> "under any circumstances whatever,"

and that Mr. and Mrs. Duss were the last members admitted; as a part of his plan to obtain possession of the assets of the society he made arrangements with Judge Hice and John Reeves

> "whereby Duss agreed to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank,"

and he did so use over $1,000,000 of the society's money; that this indebtedness of the bank was caused by the mismanagent of Hice and Reeves.

That on December 21, 1892, Mr. Duss,

> "conspiring to defraud your orators and the members of said society generally, and to provide means for the payment of the indebtedness of the said Economy Savings Bank,"

borrowed $400,000 and gave a mortgage on the Economy lands to secure it; that this mortgage was made without authority from the society, and Henrici, one of the trustees, did not comprehend it when he executed it.

That Duss, Hice and Reeves and other confederates, by a foreclosure of the mortgage, expect to obtain the land.

That in June, 1893, Mr. Duss borrowed $100,000 more and gave a mortgage on the same property for it in order to

> "induce the removal of those members most likely to inquire into the validity and propriety of his conduct as trustee."

That the society had large personal estate, amounting to nearly $2,000,000, and that Mr. Duss sold all this in order to raise funds to carry out his purpose to get hold, for the use of himself and his confederates, of the assets of the society.

That Mr. Duss induced the following members to withdraw, using as a means some $200,000 of the money of the society:

Samuel Siber, one of the trustees;

Hugo Miller,
Jacob Nichlaus,
Blazius Platz,
Moritz J. Fredericks,
} Members of the Board of Elders,

and put in their places Reithmueller, a relative of Duss, as trustee, and Susie C. Duss, Maria Diem, Fredericka Muntz, Regina Lautenschlager and Karoline Molt on the Board of Elders.

That, in addition, Mr. Duss

> "fraudulently and secretly induced by representation, coercion and the payment of large sums of money"

other members to withdraw, as follows:

Julius Stickel,
Pauline Stickel,
Sigmund Stievater,
Christina Hoerer,
Elizabeth Siber,
Benjamin Feucht,
Rebecca Feucht,
Henry Feucht,
Margaret Feucht,
Tirza Feucht.

That in April, 1894, Mr. Duss agreed with Hice, Reeves and James Dickson

> "to convey the town of Economy, the surrounding properties and certain other lands of the Harmony Society"

to the Union Company, a corporation of Pennsylvania, and thereby Mr. Duss

> "attempted to wholly terminate the existence of the society,"

and that Hice, Reeves and Dickson compose the Union Company.

That Mr. Duss, being unable to

> "obtain the consent of the remaining members to withdraw,"

is now compelling them to leave by intimidation and oppression, and gives Elizabeth Beck as one to whom Mr. Duss was cruel.

That Mr. Duss is selling the liquor of the Harmony Society without license.

That the principle of equality is abandoned, and while Mr. Duss and family live in luxury, the other members of the society

> "are now obliged to be content with the bare necessities of life."

That Mr. Duss is a man of bad moral character, and has been guilty of duplicity with Fredericka R. Kroll, a young woman he sent to Teeds.

This is the second conspiracy which the bill alleges, paragraph 12,

> "has been almost consummated,"

and these are the means by which Mr. Duss sought to accomplish his end, *i. e.*, to secure for himself and his confederates the property of the Harmony Society.

The answer denied all charges of conspiracy and improper conduct, and the master found, on a full review of all the testimony, that no one of these matters charged against Mr. Duss—*not a single one of them*—was true.

He sums up his different findings as follows:

> "The master finds that the averments of the 14th paragrah of the bill are not true."
> (Record, p. 150).
> "The 15th paragraph of the bill is not true as stated."
> (Record, p. 152).

After considering all the testimony and showing the society agreed to the mortgage and it was necessary to pay debts, and that the Harmony Society was a partner in the Economy Bank and liable for all its debts (Record, pp. 152, 153, 154), the master finds there was no evidence to support the averment that Mr. Duss intended to buy in the property under the mortgage,

> "and the master finds it is not true."
> (Record, p. 155).

Considering the evidence as to the $100,000 mortgage, which he finds has since been paid, and the charges that Mr. Duss has disposed of the personal property, he finds that the

> " * * * * * proceeds have been applied to the payment of the debts of the society and for its uses and benefit, and that the charge in the 18th paragraph of the bill that Duss is attempting to divert the assets of the society from the use of its members and appropriate them to the enrichment of himself and his confederates, is not true."
> (Record, p. 155).

As already shown, the charge in the 19th paragraph of the bill, as the master finds, that Mr. Duss had, by

> "artifice, misrepresentation, coercion and fraud, induced or forced all the active and more intelligent members of the society to withdraw, and has secretly and fraudulently appropriated several hundred thousand dollars of the moneys of the society and used it in getting rid of these members of the

society, is denied in the answer, is not supported by the evidence, *and is not true.*"
(Record, p. 155).

He then examines in detail the circumstances of each withdrawal (see pp. 155 to 159 of record), and adds:

"All the other averments in this paragraph of the bill are denied in the answers and not supported by evidence."
(Record, p. 159).

He then takes up the averments in the 20th paragraph, that Mr. Duss, without the authority of the society and by secret arrangements with Judge Hice, Reeves and Dickson, had conveyed certain of the lands of the society to the Union Company, a corporation of Pennsylvania, and that this was an attempt to

"wholly terminate existence of the society."

The answers admit and justify the conveyance of the land, and after considering all the evidence on it (pp. 159 to 163, Record), the master finds:

"The master, therefore, finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society, and did not terminate it; that it was not a breach of trust on part of the trustees; that it was competent for them to make the conveyance, and, further, that it was not an abandonment of any of the purposes for which the association was founded."

Taking up the 21st paragraph, which charges that Mr. Duss is endeavoring by intimidation and oppression to compel the remaining members to depart, and which instances Elizabeth Beck as an object of oppression, all of which the answer denies, the master concludes (p. 164, Record):

> "The whole paragraph is denied in the answers, and is not sustained by the evidence. There is no evidence that Duss is endeavoring by any means to compel the remaining members to withdraw."

Then again, on p. 163, Record, he finds that

> "the charge of intimidation and oppression and cruel conduct on the part of Duss is not sustained by the evidence, and is not true."

Concerning the charge that Mr. Duss is engaged in the sale of liquor without license, he considers (see pp. 165 to 169 of Record) all the evidence on this and shows (p. 168) it is not true.

As the master shows, the Harmony Society was never a temperance organization, but engaged largely in the manufacture of wine, whisky and beer. The society always had a hotel in Economy where whisky, wine and beer were freely sold. Every week each member received a liberal allowance of wine or beer—greater in summer than in winter. Whisky was not so distributed except in case of sickness.

The charge (23d paragraph) that the principle of equality has been abandoned, and that Duss and his family live in luxury, while the other members get the bare necessities of life, is denied by the answers, and examined by the master, who finds (p. 170, Record):

> "There is no evidence that Duss and his family are enjoying any luxuries or living in any manner differently from or more expensively than the other members of the society; or that the aged and infirm are obliged to be content with the bare necessities of life.
>
> "The master, therefore, finds that there is no inequality or discrimination in the mode of life or treatment of members of the society, and that the averments of this paragraph are not true."

The averments of the 24th paragraph of the bill as to the moral character of Mr. Duss and the specific averments as to Miss Kroll are denied in the answer. A large amount of testimony was taken, and the master sifts it all (see pp. 170 to 173, Record), and concludes (p. 173):

> "The master, therefore, finds that none of the averments of the 24th paragraph are sustained by evidence, *and that they are not true.*"

The charge as to Miss Kroll was so fully disproven that both the Circuit Court and the Circuit Court of Appeals went out of their way to condemn it.

Judge Acheson said (Record, p. 190):

> "And now, before closing, we deem it to be our duty to declare that, after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the senior trustee, in the 24th paragraph of the bill, are not sustained by the evidence, but are disproved."

Treating of the averments in the 25th paragraph of the bill, that said Harmony Society has become dissolved, which averment was denied in the answer, the master takes up all the testimony, including that of Feucht and Steickel, the mischief makers in this case, and considers all the reasons given by them as to *why* the society has been dissolved, which were that, according to their views, Christianity had been abandoned and drunkenness and adultery had become prevalent in the society since Mr. Duss took charge. He treats of it at length (pp. 173 to 185, Record) and concludes that no one of them is true. The evidence did show occasional individual cases of excess of drink, but nothing more.

Mr. Duss is a consistent temperance advocate, and it was not even pretended that he had been guilty of the offense charged.

Thus, in detail, the master met and rejected all the charges in the bill by which it was sought to show that the Harmony Society had been dissolved by mutual consent of its members or by abandonment of the purposes for which it was organized.

But it would be unfair and unjust to Mr. Duss not to sketch briefly his career in this society. Maligned and abused because among the faithless he was faithful, found the simple narration of the facts without exaggeration or rhétoric, will present him as an earnest, honest, determined and able man, working for the preservation of the Harmony Society.

MR. DUSS.

He was born at Cincinnati February 22, 1860. His father was a soldier and died in 1862. His mother brought him to Economy in 1862, and he remained there as a child until 1873, when he went to the Soldiers' Orphan School at Phillipsburg until he was sixteen; came back to Economy in 1876 where he remained until 1879, with the exception of a short trip to Germany. In July, 1879, he went to Mount Union College for several years. Leaving this college, he became a teacher in the reform school at Topeka, Kansas, but unable to stand the climate there, he returned to Ohio, and in 1882 was married to the present Mrs. Duss. After this he went to

Buroak, Kansas, in 1883, and purchased a stock farm in 1884, and in 1888, at the urgent request of Father Henrici, who was then senior trustee of the Harmony Society, he returned to Economy and began teaching school.

His mother had been continuously at Economy from 1862 to April, 1891, except for short periods. She joined the society in 1887.

In January, 1890, at the suggestion of Father Henrici, Mr. Duss and Herman Fischern, a former teacher, joined the Harmony Society. On January 2d, 1890, George Kirschbaum, one of the elders, was killed by an explosion of natural gas. Shortly afterwards John Wirth, another member of the Board of Elders, died of paralysis, and on January 22, 1890, Jonathan Lenz, the junior trustee, also died suddenly of heart disease.

It was after these deaths, and on January 24, 1890, that Mr. Duss, Herman Fischern and Jacob Nickalous were duly admitted to membership in the society, and afterwards elected to the Board of Elders to fill the then vacancies, and this without objection from any one. Ernest Woelful was elected junior trustee, and he died July 26th, 1890, and on July 28th, 1890, Mr. Duss was elected to succeed him.

When Mr. Duss was elected junior trustee he was ignorant of the financial condition of the society. Father Henrici was appointed by George Rapp one of the agents in 1834, and in 1847 he and Mr. Baker, under the agreement of 1847, were appointed the trustees. So he had been a trustee for nigh sixty (60) years, and since Lenz was appointed junior trustee, in 18—, Henrici had charge of all the business except the lumber and oil, which Mr. Lenz saw after. The extent of that business is given by the master (pp. 115 to 119, Record). It included glass and iron manufactories, dealing in coal and oil and lumber, running saw mills and cutlery works and file works, making of railroad cars, buying land and selling

it out in lots; organized and conducted the Economy Savings Bank, which at one time was of great reputation and had large deposits; built railroads, made and sold whiskey, wine, beer and cider.

The society undoubtedly then was supposed by the world to be very wealthy, but soon after Mr. Duss became junior trustee he found that the former trustees *never kept or had kept books of account.* There was no record whatever of any kind as to what the society owned or what it owed. Mr. Henrici was then advanced in years, but still tenacious of his position, and either could not or would not give the desired information. Mr. Duss, however, began to receive notices from different banks that notes of the society were falling due. By December, 1891, he found out that the great wealth of the society was a myth, and that its exact condition and whether solvent or not could only be demonstrated by an expert accountant. Accordingly, in April, 1892, he employed one of Pittsburg's most accurate experts, Mr. James Dickson, who at once entered on the search, and the result of the same beggared belief.

The indebtedness of the society was as follows:

Negotiable notes, ...	$317,350 00
Open accounts, ...	41,000 00
Debts due on demand, . . .	1,081,000 00
	$1,439,350 00

If to this accrued interest were added up to April 1st, 1892, the total debt would be over $1,500,000.

The banks that held the notes held some collaterals, but they were uneasy and pressed for more security or payment.

But the chief danger was the Economy Savings Bank, which was a partnership in which the society had $\frac{8}{16}$ interest, and hence was liable for all its debts. It owed about $1,100,000, of which sum about $1,000,000 was for deposits

due to say 3500 depositors, and practically on call. The bank had to meet this a varying cash account showing from $2,000 to $20,000 cash on hand. In addition, the bank owed to the state treasurer about $163,000, and he was pressing for payment. The other $\frac{2}{10}$ in this bank was owned by Messrs. Hice and Rieves, neither of whom was of any financial strength.

The Harmony Society had to meet all this, a considerable amount of stocks and bonds and real estate, which are all given in detail by the Master (pages 122 to 126); but the most of the assets were not readily convertible, and of the *quick* assets all were pledged as collateral for the notes of the society. Among these assets were 7866 shares of the stock and $276,000 of the second mortgage bonds of the Pittsburg, Chartiers and Youghiogheny Railroad Co. Both of these were then unmarketable, but Mr. Duss succeeded in the winter of 1891-2 in effecting a sale of both for $334,000. This enabled him to pay off the debt due the state, to reduce the debt of the Economy Savings Bank, and to carry the society over until the fall of 1892. The balance of the indebtedness, and especially that of the Economy Savings Bank, had to be provided for; and, instead of sacrificing the securities and realty, Mr. Duss conceived the idea of a large loan to run for several years and secured by a mortgage on the Economy lands. This he negotiated with Harry Darlington, trustee under the McCullough will, and arranged for a loan of $400,000, payable in five years. A question being raised as to the power of the trustees under the agreement of 1847 to make a mortgage, the whole society was called together and the matter explained to them, and on December 20th, 1892, a supplemental agreement was duly executed and signed by all the members except the Feuchts. This is given at length (pages 107 to 109) in the Master's Report. It gave undoubted authority to mortgage, and so on December 21st, 1892, it was

made and executed and the money received. All of the bank debts, where the personal assets had been pledged as security, were paid off and the securities released.

Mr. Henrici, the then senior trustee, died on December 25th, 1892, and Mr. Duss became senior trustee, and had as his junior Samuel Siber. Immediately after Mr. Henrici's death, the Feuchts began to make trouble. Newspapers in Pittsburg published items stating that the Feuchts were about to institute proceedings to dissolve the society, and these continued until such bill was actually filed on February 10th, 1893, in the Common Pleas of Beaver County, Pennsylvania, which did pray for the appointment of a receiver and for a dissolution and for a preliminary injunction to restrain the trustees from in any way disposing of any property. This, too, was bulletined in the public press, and naturally the before slow withdrawal of funds from the Economy Savings Bank then became a *run*. On the day the bill was filed depositors withdrew from the bank $117,110.03 (Record p. 127). The $400,000 loan had then been exhausted, and Mr. Duss, by temporary loans, bridged over the difficulty and triumphantly carried the bank through without closing its doors. Hice and Rieves, each owning $\frac{1}{10}$ of the bank, were financially weak and unable to assist, and the whole strain fell on Mr. Duss. On February 13, 1893, a meeting of the society was called, the Feucht bill explained, and thereupon a set of resolutions were unanimously passed, which, *inter alia*, were:

> *First.*—"That we protest earnestly against the filing of this bill, and we herewith make known our resolution to stringently oppose the same; that the same are directed against the fundamental laws of our society and seem to spring from selfish and un-Christian motives."

Second.—"That we herewith declare as untrue the charges which are made in said bill against our trustees, against our elders and against ourselves, and we herewith embrace this opportunity to declare our perfect trust in our present trustees and elders."

Third.—"That we require our trustees to employ counsel to take all necessary steps which they may deem wise and necessary to defeat said bill."

(Record, p. 110).

The Feuchts, as if determined to bankrupt every one connected with the society, and chiefly to gratify their revenge at Mr. Duss' success and Henry Feucht's degradation, made a motion for a preliminary injunction and receiver, which was argued on March 3d, 1893, and refused.

The commotion inside the society may be imagined. Here were the Feuchts still members; smart and never tiring of the dissemination to all the members of stories picked from the gutter and colored with malice; Henry Feucht, restless, unscrupulous and vindictive, abounded in false reports as to Mr. Duss and the condition of the finances of the society. This fomentation grew until its natural result appeared. The very best of the members, sick of it, disgusted with the turmoil which the Feuchts caused, fearful of bankruptcy, determined to withdraw, and all Mr. Duss' persuasion could not keep them.

The Feuchts litigation and the constant daily troubles with them persuaded the other members to get them out of the society, even at a wholly unreasonable price, and at last this was accomplished. The trustees paid to Henry Feucht and his wife, Benjamin Feucht and his wife and Tirza Feucht $38,000 in cash and eight (8) acres of land, worth, say, $12,000 more.

These facts could not be concealed, and pandemonium seemed to reign inside the society, with a desire, apparently, on the part of every one to withdraw. When urged to stay, they became restless and threatened Feucht's mode of compulsion.

The trustees, under the agreement of 1847, were authorized

> "to make donations to seceding and excluded members."
>
> (Record, p. 69).

This had before always been in substance included in the earlier agreements, and these left the amount to the judgment of the *superintendent*. See agreement of 1836, p. 64, and the same provision in the agreement of 1827, p. 61–2.

The result of all this turmoil was that the following members did withdraw and received the following sums:

March 8th, 1893.	Hugo Miller,	$5000
March 29th, 1893.	Julius Stickel,	$3500
	Pauline Stickel,	
	Bertha Garatch,	
May 5th, 1893.	Jacob Nichlaus,	$5000
May 17th, 1893.	Sigismund Stievater,	$5000
June 5th, 1893.	Moritz J. Fredericks,	$5000
June 9th, 1893.	Blazius Platz,	$5000
June 23d, 1893.	Christian Hoerer,	$5000
	Leonard Hoerer,	
July 6th, 189—.	Samuel Siber,	$5000
	Elizabeth Siber,	

The Master found that (page 112 of Record),

> " * * all of these withdrawals, except that of Siber and his wife, were in the opinion of the Master caused by that (Feucht) litigation."

See for full consideration of each withdrawal pages 155 to 158, where, among other things, the Master found that:

> "Mr. Duss did not try in any way to induce any of these persons to withdraw, and no witness testified he had done so. * * "
> (Page 157).

Mrs. Siber withdrew because of charges against her character, and her husband was unwilling to remain because of these rumors, and also her withdrawal.

The Master found (p. 157):

> "Mr. Duss and all who talked to him (Siber) about his leaving wanted him to remain."

The Feucht withdrawals compelled them to discontinue their suit, but the run on the Economy Bank still continued, and in May, 1893, a second mortgage was given and a second loan of $100,000 obtained.

Mr. Brooks, who had greatly aided Mr. Duss in raising money, and who, at one time, pledged his personal responsibility to effect it, advised Mr. Duss to have the society organize a corporation to which to convey its real estate. The real estate would pay for the stock, all of which would be owned by the society. It was not intended to divide the stock. Its trustees were to hold that stock for the society. The reasons for this were several. New suits were threatened against the society which it was thought would more certainly tie up the sale of its real estate if the title was in the trustees than in a corporation. Then, as the trustees hoped to sell many small parcels of realty, it was believed one abstract of title and opinion on it could the better be used than if it were still owned by the trustees. If the reality was owned by the corporation there was no question of a technical equitable

estate in the members. The additional reason that stock was more easily handled and could be pledged to secure loans prevailed, and on April 11, 1894, all the members signed a paper consenting to such conveyance to the Union Company, and it was made.

(Record pages 112, 113 and 114.)

The stock went to the trustees. The title to the realty vested in the Union Company, but the society, owning all its stock, continued in undisputed possession and use of the realty.

Mr. Duss sold, as speedily as good prices could be obtained, the stocks and bonds the society had, and also sold part of its real estate, until on January 1st, 1896, the society, which he found overwhelmed with debt in 1891, showed up as follows:

The total indebtedness of the society had been reduced from $1,474,958.58 of November, 1892, to $360,000, with a possible $11,000 more, on January 1st, 1896. The second mortgage had been fully paid off, and of the $360,000 of debt, $350,000 was on the Darlington mortgage for $400,000.

To meet this indebtedness the society had, *exclusive* of the village of Economy, other real estate valued at $203,725.01, and personal property valued at $366,672.05, making a total of $570,397.06.

(Record, p. 128, 129).

The master, at very considerable length, has taken up and treated the question of the financial condition of the society. See Record, pp. 122 to 137.

It is hardly necessary here to repeat that, but if any one desires the fullest information, he will find it on the pages referred to.

Thus, through good and evil reports, through adverse circumstances which would have made most men quail, Mr. Duss rescued the Harmony Society from the greatest peril it ever encountered. For so doing he who truly was its saviour is openly charged with attempting to wreck and ruin it. If it had not been for him, the society would have had no property to fight about; yet he has been the target for endless abuse by the very men who seek to participate in what he has saved.

Startled with the discovery of a debt not one cent of which he created or was morally responsible for, which threatened total ruin to the society, he found all the society's available and quick assets tied up by pledges to different banks, while creditors were uneasy and demanded cash. In the very height of his troubles Mr. Henrici died, and the Feucht faction, hitherto restrained by Mr. Henrici, began a system of attacks which necessarily weakened the already tottering credit of the society and irritated to insubordination the men in the society who might have aided, or, at least, encouraged, Mr. Duss in his determined struggle. With a run on the Economy Savings Bank which threatened to close it, the Feuchts filed a bill in equity against the society praying for a distribution of its property, and prayed for the appointment of a receiver and for a preliminary injunction to restrain Mr. Duss from any further payment out of assets. This increased the run

on the bank and the irritation of the members of the society, and just when money—ready cash money—was all needful to rescue the society from ruin by its creditors, this *internecine* strife was begun. So Mr. Duss' task was not only to pacify the outside creditors, but the Feucht faction and the other irritated members within, and the only means of doing so was *cash*. When he tried to raise it by mortgage the Feuchts claimed he had not the power to pledge the property for borrowed money. Let Mr. Duss turn where or how he would or propose any possible action, the Feuchts were against him. Indeed, the plaintiffs in their bill (paragraph 16, p. 12, of Record) attacked the validity of the mortgage which was mainly instrumental in saving a part of the property of the society, an interest in which the appellants are claiming.

With such an enviable record of real, substantial, good service to the Harmony Society, it is too bad, *too bad*, that Mr. Duss should be so maligned and misrepresented as he has been in this case. All of these people should bow to instead of reviling him.

When the Feuchts and the appellants, by their suits and charges of fraud and general misconduct, have themselves been the means of driving men out of the society, it is *too bad* to turn around and blame Mr. Duss for such withdrawals.

When these suits and charges have deterred all outsiders from any desire to enter and become a member of the society so that no application of the kind has been made since Feuchts' bill was filed in 1893, it is *too bad* to blame Mr. Duss with this distrust and treat it as if he had worked for it and brought it to pass.

When Mr. Duss alone of all the men of the society who could aid it in its troubles *did* render it the most essential aid and saved it for the members from ruin, it is *too bad* that such beneficent conduct on his part, it is now claimed, was a skillfully devised plan to seize into his own possession and use the property of the society.

The master, Judge Acheson and Judge Gray all listened to the complaint of the appellants as to the Union Company and the conveyance to it of most of the real estate of the society, and all agreed with us that the society had the power, all members agreeing, to change realty into personalty or personalty into realty. Indeed, this power, as we have shown *supra*, rested in the trustees. That there was no evidence showing any intent by this change to terminate the society or divide its assets among the members. That there was no *secrecy* about any of the matters connected with the Union Company, but, on the contrary, it was advertised in the newspapers, its charter publicly issued at Harrisburg and the deed of the trustees conveying to it the real estate was recorded in the recorder's office of the proper counties.

Why should appellants print and repeat, as on pages 52 and 55 of their brief, that Mr. Duss is practically the last survivor, and as such claims all the property of the society, when nothing in the case in any way justifies so flagrantly wrong a charge?

APPELLANTS' HISTORY OF THE CASE.

We differ so widely from appellants in their statement of many of the alleged facts of the case that duty compels us (after most of our brief was in print) to briefly call attention to some of the errors made on their part.

This court has before it an agreed record. The appellants were not forced to make it so, but were at perfect liberty to have printed all the testimony. Choosing not to do, they cannot be heard to *intimate* or *suggest* that *if* the evidence were printed it would show errors in the master's finding of facts. Just the contrary, it would confirm the master's findings and expose the groundlessness of appellants' claims.

This agreed record, besides the docket entries, bills and answers and assignments of error, consists only of:

(I.)—The master's report.

(II.)—Opinions of the Circuit Court and Circuit Court of Appeals.

(III.)—The release or quit-claims of retiring members between 1900 and date of filing bill.

(IV.)—So called records of the Union Company.

There is nothing else part of the record from which this court can or appellants should seek to ascertain the facts than the master's report and the opinions of the Circuit Court and Circuit Court of Appeals. The bill is printed, but the answers deny its averments. The releases of *withdrawing* members and the charter of the Union Company are all in the master's report, and add nothing to the appellants' case.

Where the record is agreed upon, this court, in the words of Rule X.,

> " * * * * will consider nothing but those parts of the record."

This being so, why should the appellants so often state alleged facts of which there is no evidence whatever, and as to which the master and both the lower courts found against their view?

Let us direct attention to some of their mistakes:

(*a*)—That never until Mr. Duss was elected senior trustee did such trustee and his wife occupy the chief house and preside over the society.

The fact is just the contrary. George Rapp, the founder of the society, was married and he presided over the society from 1805 to 1847, and after they came to Beaver county Rapp, with his wife, lived at the Great House.

(*b*)—That because Mr. Duss and Siber, the two trustees, were married,

> "these occurrences excited comment among the old members of the society, for it effectually destroyed the doctrine of celibacy."

Instead of this being so, as the master has found (Record, pp. 182, 183), in 1814 two hundred and two (202) married men and their wives, along with George Rapp and Christina, his wife, were members of the society. In 1845 there were twenty-nine (29); in 1848, twenty-three (23); in 1890, five; in 1892, six.

In 1829 the parents of the Feuchts, having temporarily left, were allowed to return to the society, "*having born to*

them in the society and during their membership four children." (Record, p. 182).

The agreements of 1805 and 1827 contain express covenant from Rapp and his associates, or association, not only to provide for the members themselves, but also for "*their children and families.*" (Record, pp. 57, 61).

(*c*)—Time and again appellants assert that Mr. Duss bought out members of the society and induced them to leave; that he distributed the assets of the society among the members; that he acted as liquidating trustee; that he negotiated for the interests of Kellerman and Gilman; that he persisted in his actions to persuade or force members to withdraw, and used the assets of the society to accomplish his purpose. On certainly twenty pages of the appellants' brief, in one shape or another, such charge is reiterated and attention constantly called to the large sums paid withdrawing members.

The master found (p. 112, Record)

> "and all these withdrawals, except that of Siber and wife, were, in the opinion of the master, caused by that litigation" (Feuchts' bill).

Again, on page 158 of Record, after an exhaustive consideration of all the evidence, he found:

> " * * * * * and the action of the trustees in their settlements with the withdrawing members was certainly prudent and, under the circumstances, *for the best interests of the society.* * * * * * *
>
> "It is thus evident that the withdrawal of these members *was not caused by any scheme or action of Duss*, but by the filing of the Feucht bill against the society, and the consequent excitement and panic caused by the actions of the plaintiffs, prior to and after it was filed."

Judge Acheson, who, in his opinion, said he had read all the testimony, confirmed these findings, and the Circuit Court of Appeals also affirmed them.

(*d*)—The appointment of a master was not caused by frequent refusals of Mr. Duss to answer questions, but by the appellants insisting on a line of examination that counsel of appellees objected to, and which Judge Acheson characterized as unwarranted.

(*e*)—Complaint is made of the space the master gave to the accounts of Mr. Duss and of the Harmony Society. We claimed below, before the court and the master, that the appellants must first show an interest in the property of the Harmony Society *before* he could go into its and Mr. Duss' accounts. Acknowledged to be right in that (see Judge Acheson's opinion, p. 55, Record), still after the master's appointment the appellants practically introduced all the evidence they desired, and, amongst other things, went into these very accounts.

(*f*)—The master found, what the articles of agreement which make the constitution of the society *prove beyond doubt*, that celibacy was *not* one of the purposes for which the society was organized. It was early advocated as an exalted mode of life, but that it ever was *one* of the purposes for which the society was organized is unsupported by any evidence in the case. It is not referred to in any of the agreements, but it was practiced to a large extent.

It never has been abandoned. The assertion that it has is wholly unsupported, and is contradicted by the master's report, affirmed by the decrees of the Circuit Court and Circuit Court of Appeals.

(*g*)—The appellants constantly reiterate the formation of a conspiracy by Mr. Duss and others to wreck and terminate the existence of the Harmony Society, and assert that every act of his is towards that end, and that his scheme is to become the sole survivor of the society, and thus own all its property.

The master found that not one word of this charge is true; that, instead of scheming to destroy, he worked to save the society; that he was its benefactor in a very large and very true sense; that had it not been for Mr. Duss there would have been no property saved to fight about.

Judge Acheson thought these charges were so unjust that they should be denounced, and hence in his opinion he says:

> "In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the present officers or members of the society and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril."

Judge Gray, who wrote the unanimous opinion of the Circuit Court of Appeals, after referring to the agreement of the master and the Circuit Court on the finding of facts, said:

> "A careful examination of the testimony and evidence contained in the record before us * * * * convinces this court that they were in all respects justified."
>
> (Record, p. 214).

Then he uses the very language of Judge Acheson in finding the falsity of that charge of conspiracy.

(Record, p. 217).

(*h*)—The value of the property of the Harmony Society is liberally dealt with. On page 25 of their brief it is stated as at least $4,000,000. On page 12, that, after paying all debts, there remains between

> "four and five millions dollars of assets."

There is absolutely nothing in the record to justify this, and as a fact it is a gross exaggeration.

(*i*)—On page 156 appellants excuse themselves for not proving

> "the general bad character of John S. Duss"

by citing Judge Acheson's opinion while the case was before the examiner and prior to the appointment of a master.

Yet on the next page, 157, they assert

> "every charge we made against Duss was supported by testimony produced by appellants."

As a fact they had every opportunity before the master to prove all material allegations.

(*j*)—On page 27, and again on page 157, appellants refer to the charge in this case whereby an innocent girl of eighteen was alleged to have had improper relations with Mr. Duss.

The charge will be found in the 24th paragraph of the bill, and denied in the answers. It had no evidence to support it, except the maliciously false evidence of a witness by the name of Weggle, who on the stand recanted and openly avowed the utter falsity of his charges.

His story, as the master's report shows (pp. 170–173), was overwhelmingly met by appellees. The young lady herself and Mr. Duss denied it under oath. The circumstances showed its absolute falsity, and the master, the Circuit Court and Circuit Court of Appeals unite in condemning it.

On page 172 the master finds

> " * * * * * that the charges made by Weggle against him (Duss) and Ricka Kroll are untrue and entirely without foundation in fact; and that the averment that Duss is a man of bad moral character is not sustained by the evidence. * * * * * *
>
> "The master, therefore, finds that none of the averments of the 24th paragraph are sustained by the evidence, *and that they are not true.*"

Judge Acheson, before concluding his opinion, said:

> "And now, before closing, we deem it to be our duty to declare that, after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the senior trustee, in the 24th paragraph of the bill, are not sustained by the evidence, but are disproved."
>
> (Record, p. 196).

The Circuit Court of Appeals adopts this language.

(Record, p. 218).

(*k*)—It is also time and again reiterated that Mr. Duss has ordered that no new members be taken into the society, and that he persists in carrying this out, knowing it means the death of the society; that no new members have joined since Mr. Duss became senior trustee.

Mr. Henrici died Christmas, 1893, and Mr. Duss succeeded him. Immediately the Feuchts started the rumors as to the troubles in the society, and this was followed by their bill in equity and the trouble growing out of the financial condition.

No wonder no one ever applied for admission to such a seething mass of troubles.

No sooner was one matter settled than these appellants began their litigation, asserting the society was dissolved and asking for a receiver.

Would any man or woman worthy of admission join the society when it meant to be an additional party defendant in

this litigation? By joining he or she gave up all their property to the society and promised implicit obedience. Would any one do this with a law suit pending which claimed that all the property of the society should be distributed among all the descendants of all the members since 1836?

As a fact no one has applied for membership, but it is entirely unwarranted to charge that Mr. Duss has given orders to admit no applicant.

BRIEF EXAMINATION OF SOME OF APPELLANTS' LEGAL POINTS.

(I) Appellants (pages 4 and 5 of their brief) assert that:

> "The article of 1836 is the *only material* article *bearing upon the property rights of the plaintiffs*, while the articles of 1805, 1821, 1826 and 1847 are material in considering the character of the trust, the purposes and principles of the society, etc."

Prior to 1836 the Harmony Society had existed from 1805 and hundreds of persons had been members.

These members by three written agreements—1805, 1821, 1827—had accurately defined the respective rights of all the individuals composing the community and of each separate individual as a unit. In the agreement of 1827 the parties say that the purpose of making it was to definitely fix

> " * * * * that the condition of membership should be clearly understood, and that the *rights* and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other."

Then follows in detail, as we have seen in the prior part of this brief, the respective covenants which accurately determine the rights of each individual member.

The sixth article provided for the payment to a member who withdrew of

> "the *value* of all such property, without interest, as he or they may have brought into the community."

The agreement of 1836 refers to and copies at length the sixth article of that of 1827; asserts that it is inconsistent with

> "the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association,"

and is also now unfair because in 1818 all evidence of contributions was destroyed.

"*Now, therefore,*" this agreement says we do

(1) Annul the sixth article of the agreement of 1827, but that

> "*all others remain in full force as heretofore.*"

(2) All property shall be deemed

> * * * * "joint and indivisible stock; each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

(3) In case of departure from or death in the society,

> "neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right."

By some esoteric process the appellants do not explain they allege this worked an entire transformation in the rights of the individual members and enabled every one of them who died in the society since 1836 to transmit to his heirs an inchoate title which overhung the society during all its life and on its dissolution—it might be one hundred years after 1836—would ripen into one giving its owner the right to participate in a division of its property.

To ordinary view the articles of 1836 in no respect changed those of 1805 and 1827, except as to the return of the value of property contributed. Indeed, they were careful to so state in the article itself that, except the 6th, all the other parts of the agreement of 1827

> "remain in full force as heretofore."

It added nothing to any individual right of any member, but was negative in denying rights theretofore existing.

The property was declared to be "joint and indivisible stock," but such it was under the agreements of 1805 and 1827, except the right of the seceder to the value of his contributions.

And then, as if in words to deny the very things the appellants now assert, *i. e.*, that each individual had a title in the joint property which would survive him and go to his heirs, it adds in its own words:

> (*a*) "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

The words are "finally" and "irrevocably" parted—not parted for a time, or during good behavior by the trustees, or so long only as a society exists to carry out certain purposes, but over and beyond all these parted

"*finally and irrevocably*."

(*b*) And, as if this was not plain enough, and seeing that such persons as the plaintiffs might one day give trouble, they added:

> "Should any individual withdraw from the society or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right."

Now, the plaintiffs' whole case on title is that certain of their ancestors *did* depart this life and they, as *representing* such ancestors, can make claim to the society's property. But this is directly in the teeth of and to the contradiction of the words of those ancestors in the agreement under which these plaintiffs claim.

The appellants claim that, though it is a fact they cannot deny that no one of their ancesters ever contributed one cent in property or money to the society, and therefore could not have had in 1836, or at any other time, any right of restitution, *yet* by this agreement of 1836 each became donors of all the property of the society for certain uses and purposes—and donors in such a sense that, contrary to the very words each used in that agreement, each held back a title in the thing he contributed, which title he could transmit to strangers.

As no one of the appellants ancestors contributed aught to the society, no one of them had any right of restitution in any shape or form. Stripped of its verbiage the appellants position is then that *because* their ancestors in 1836 agreed to give up the right of restitution, *which they did not possess*, this of itself and by some magic transformed them into donors of

all the society's property to the society itself even when they must admit they gave nothing. Now the society before 1836 owned all the property and the individual member as one of the whole had the right to insist on his support and maintenance out of it—but only so long as he was a member—a living member. This being so, the agreement of 1836 contributed no property whatever to the society. Not one cent was added by that agreement. No one of the appellants by signing that agreement relinquished any right whatever, but each stood as the society did just as they were before it was signed. It is true that those who contributed property to the society did give up the right of return if one left, but no one of the appellants contributed aught.

The appellants now claim that *only* the representatives of those who died in the society after 1836 can participate in the distribution of its property. (See their brief, pages 28, 29.)

This was not the claim made in the bill when the descendants of those who left the society also claimed to participate in its property. (See second and third paragraphs of the bill.)

Why are all the members who died between 1805 and 1836 cut out, even though each may have largely contributed property to the society?

Yet the appellants whose ancestors never gave a cent claim that the agreement of 1836, long subsequent to the death of many members who did contribute, cut off all the descendants of every dead member prior to 1836? And not only did this, but created new donors for a property the society already owned.

Of course, the conclusion is that, as much as we may admire their intellectual gymnastics, the rights of parties clearly defined by written agreements cannot be taken away by brilliant devices or argument. The agreement of 1836 did not work such magic as appellants claim.

But in one respect the appellants' argument is the direct affirmation of the validity of our main contention, *i. e.*, that all the members of the society at any one time constitute it, *are* the society, and may change all of its agreements and sell or give away or divide all of its property.

The appellants rest all their rights under the agreement of 1836. The persons who made that agreement were the members alive at that time. If, as appellants claim, it revolutionized the property rights of individual members and cut off the heirs of all dead ones, how did those members alive in 1836 get such power? Simply because they then constituted the society. They were the society, owned all of its property and might regulate it as they saw fit. We freely admit that those alive in 1836 *might* have made any change they saw fit, but say they did not do as claimed.

But if those alive in 1836 could do so, why might not those alive in 1840, or 1860, or 1880, or 1900, do the same?

What particular power resided in all the members in 1836 that all the members at any hour of all the future existence of the society did not have and do not now have?

COMPETENCY OF SOCIETY TO OWN PROPERTY.

The appellants agree (pp. 28–60 of brief) that originally Frederick Rapp, the then trustee or general agent of the society, took title in fee simple absolute to all real and personal property conveyed to him, without any sort of reference to an ulterior trust. This is equally true of conveyances to the subsequent trustees, with possibly one or two exceptions. So far, then, as the outside grantor is concerned, he cannot possibly have any resulting trust or reverter under a base fee, for he made an absolute, unqualified conveyance in fee simple, without any reference of any kind to a trust.

The question of trust *only* arises between the trustee and his *cestui que trustents*, the members of the Harmony Society. If this trust is void for any reason, it is the *cestui que trustents* only who suffer, not the trustee. If his attempt to be honest with them and hold in trust for them the property vested in him is met by them as the appellants meet it, by denouncing the trust as invalid and really immoral, then, if that be true, the trust will fail. The *cestui que trustents* take nothing and the trustee owns the property.

How will that benefit these appellants?

But no such result follows a plain recital of the facts. The trustees under the agreement of 1847 do in each instance affirm that all the property, real and personal (*ante*, p. 63),

> "is and shall be deemed the *common property* of said society, and each trustee now or hereafter appointed hereby disclaims all personal interest in the present resources and future earnings of the society *other than that of a member thereof*, according to the articles of association hereby re-established and continued, and according to the present agreement."

So, too, in 1834, Baker and Henrici, the then trustees and general agents, agreed that (p. 49, appellants' brief) they

> "shall neither acquire nor claim any personal interest in the present resources or future earnings of the said society *other than that of a member of the said society*, agreeably to the plans and terms of association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp on the 20th day of July, 1825."

The Harmony Society, in each of the agreements these extracts are taken from, is constantly named and referred to, and is *the* society they speak of. It is sometimes called the society, and sometimes the community. (See agreement of 1805, Record, p. 57).

Now the appellants argue that the Harmony Society

> "is the sole beneficiary as an organized community,"

and that the

> "members of the society are not beneficiaries,"

but the society alone has

> "the benefit of the trust property."
> (Appellants' brief, p. 42).

Again on page 62 they assert:

> "*The society as such is absolutely distinct from the members as such.*"

Are these assertions true? The idea of a universal which actually exists and is distinct from the individuals composing it was argued by the school men in the 14th and 15th centuries, and is here in substance reasserted, but the plain answer is, as all the cases cited and the written agreements show, that the Harmony Society is and always was com-

posed of all its individual members; these, taken collectively, are the society; taken individually, are its units or members. There is no uncertainty as to who they are or ever were. No one could become a member until he signed the society agreement.

Hence you need only look at the signatures to see who the members are. All these agreements were in evidence.

For easy and overwhelming proof of our assertion let us refer to some of the agreements.

In that of 1805 the parties are (pp. 56–58 Record)

> " * * * * * the subscribers of the one part and George Rapp and his associates of the other part."

It concludes with the final clause:

> "In confirmation whereof *both* parties have *signed their names.*"

Would not these signatures prove who the associates of George Rapp were, and would not Rapp and the associates and the joining members constitute the society?

In the agreement of 1821 (Record, p. 58) it is said:

> " * * * * * the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit, * * * * * of the one part and George Rapp and his *association* on the other part."

It speaks "of the community of George Rapp and his association," and concludes by saying:

> "In confirmation of these presents we *both parties* have hereunto set our hands and seals."

Would not the signatures show who composed the ***association:***

The agreement of 1827 speaks in the preamble of (Record, p. 59)

"an association or community"

formed by George Rapp and many others, and then says:

> "That we, the undersigned citizens of Beaver county, * * * * do severally and distinctly, each for himself, covenant, grant and agree to and with the said *George Rapp and his* associates."

It states the purpose of making it was to accurately define the rights of each member.

It concludes by saying:

> "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto severally and each for himself set their hands and seals."

This was signed by 522 members of the society.

Is it not easy to prove who they were?

The agreement of 1836 (Record p. 63) recites:

> "WHEREAS, *the Harmony Society, consisting of George Rapp* and *many others*, now established in the town of Economy, in Beaver county, Pennsylvania, *did on the 9th day of March, 1827, enter into* certain Articles of Association."

It reiterates that all you need to do to find out who constituted the Harmony Society is to see the signatures to that agreement of 1827.

The signatures to the agreement of 1836 shows who then composed it.

In 1834, and after the death of Fredrick Rapp (Record p. 65), the members of the society appoint George Rapp as the new agent, and the paper so appointing

Referring to the previous appointment of Frederick Rapp —the scope of it—and his death, add:

> "Now therefore be it known that we the undersigned, *constituting said Harmony Society*, do hereby nominate, etc."

This was signed by 402 members.

There could be no doubt then as to the membership.

Again in the agreement of 1847 reciting the death of George Rapp it says:

> "Therefore be it known to all whom it may concern that we the undersigned, surviving and *remaining members of the Harmony Society and constituting the same do, etc.*"

Then, too, in its conclusion this agreement says:

> "In witness whereof, we the undersigned members of the Harmony Society *who constitute the said association*," have, etc.

This was signed by 238 members.

The agreement of 1890 (Record p. 228) recites *inter alia* that,

> "on the 12th day of August, A. D. 1847, *all the then members of the said society*, by articles and a compact in writing * * * * adopted and estab-

> lished a system and plan for the regulation and government of the society * * * *"

and then stating the advisability of a new supplemental agreement stated:

> "Now therefore be it known to whom it may concern that we the undersigned, the *surviving and present members of* the Harmony Society at Economy aforesaid *and all the present members of said society do, etc.*"

Then it gave the names of all the members of the society.

It is clear then that the society referred to in the declarations of trust is the Harmony Society made up of the individual members who compose it.

Under these declarations all the members composing the society jointly are *cestui que trustents* with no uncertainty as to who they are at any one time or who are referred to in the declaration of trust as the society. But just as certainly so long as each member is in fellowship he is a *cestui que trustent* and has an interest as such in the joint property and a standing in court to protect it.

These declarations of trust are each combined with all the agreements of the society then in existence and are all to be read together, and in the declaration of George Rapp and Henrici and Lentz in 1834 they agreed that they had no personal interest in the property thus held,

> "*other than that of a member* of the said society agreeably to the plans and terms of the association."

In the declaration in the agreement of 1847 the trustees agree that the property

> "is and shall be deemed the common property of said society,"

and that they have no interest in it,

> "*other than that of a member thereof*, according to the articles of association, etc."

As a member each did have an interest. So long as a member was in fellowship in the society each could claim that all the common property should be used if necessary for his maintenance and education and that of his family.

Thus the declarations of trust included not only all jointly but each individually—though the individual held this right in common with every other member of the society in the joint property.

Judge Grier, in the Nachtrieb case 3, *Wallace, Jr.*, 82, said:

> "*Each* (member) had an equal right to and *interest in* their common property * * * * * In dealing with the rights of personal property the court can only look at the agreements of the parties * * * * These (members of the society) accumulated for themselves; they have by joint labor accumulated property of great value which they hold as *joint owners.*"

In the Speidel case, 15 *Fed. Rep.*, 753, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members* of the Harmony Society."

This court in its opinion states that it was

> "in trust for their common benefit as a community living together in the community, working for the community, subject to the regulations of the community and supported by the community."

In Goesele vs. Bimeler, 5 *McLean*, 223 (the Zoar Society case), Judge McLean held that it was in effect a universal partnership.

> "The members called themselves the 'Separatist Society of Zoar.'
>
> "The name of the society was used as a designation of *the whole body*, the same as the assumed name of a firm to designate its partners. Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions *for the common right of interest in the whole.*"

Is it not plain, then,

(I) That all the property conveyed to the trustees as individuals from outsiders vested in them an indefeasible title in fee simple, freed from all claims of the grantors.

(II) That all property conveyed to George Rapp and his associates who were the members of and constituted the Harmony Society by the individual members was a conveyance to all the other members, including Rapp, of the individual title, and the grantees were certain known persons constituting as members the Harmony Society and identified by their signatures to the agreements.

(III) That the trustees who held this property in trust for the society used the term Harmony Society just as a firm name is used to designate the members who composed it, and these members are known and easily identified.

It is useless to discuss the line of cases appellants cite, which includes Kain vs. Gibboney, 101 *U. S.*, 362, and all of which merely reiterate the old English rule that an unincorporated association, owing to the uncertainty of its members, cannot take a gift or grant. None of these cases have any bearing on the case at bar, for the reasons hereinbefore given. Each turned upon the question of the certainty of the grantees. Thus, in the Baptist Association vs. Hart, 4 *Wheaton*, 27, the grantees were said to be "the Baptist Association, that for ordinary meets at Philadelphia." In Kain vs. Gibboney, 101 *U. S.*, 363, the grantees in trust were defined in the bill as "for the benefit of the community of which I may be a member."

In all these cases the grantees were unknown and uncertain, while in the case in hand those declarations which were parts of the agreement constituting the society referred to a certain well known and easy of identification list of members who made up the society.

PUBLIC POLICY.

As we have shown *supra*, this court, the Circuit Court of the United States, the Supreme Court of Pennsylvania, Maine, Massachusetts, New York and Ohio, have all denied that such organizations are prohibited by or are against the law, and we only add here a thought derived from the Girard will case, when Judge Story, voicing the unanimous opinion of this court in 2 *Howard*, 83, in answer to the objection that the trusts in Girard's will were against public policy, said:

> "In considering this objection, the court are not at liberty to travel out of the record in order to ascertain what were the private religious opinions of the testator (of which indeed we can know nothing), nor to consider whether the scheme of education by him prescribed, is such as we ourselves should approve, or as is best adapted to accomplish the great aims and ends of education. *Nor are we at liberty to look at general considerations of the supposed public interests and policy of Pennsylvania upon this subject, beyond what its constitution and laws and judicial decisions make known to us.* The question, what is the public policy of a state, and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty and to involve discussions which scarcely come within the range of judicial duty and functions, and upon which men may and will complexionally differ; above all, when that topic is connected with religious policy, in a country composed of such a variety of religious sects as our country, it is impossible not to feel that it would be attended with almost insuperable difficulties and involve differences of opinion almost endless in their variety. We disclaim any right to enter upon such examinations beyond what the state constitutions and laws and decisions necessarily bring before us."

When we look at the judicial decisions in Pennsylvania we find the Common Pleas Court in 1835, and the Supreme Court of the state in 1836, distinctly announce that this society and the agreements organizing it were not against the policy of the state.

Schreiber vs. Rapp, 5 *Watts*, 360.

The society organized in Pennsylvania in 1805, bought a large tract of land and remained here until 1817 when it moved to Indiana, but returned to Pennsylvania in 1825, where it has ever since resided. The state has never interfered with it. Neither the executive or the legislature have in any way acted or legislated against it. Its members are all subjects and citizens, performing with alacrity their duties to the state and its municipal divisions.

Is it not rather presuming to ask this court in 1902, after over seventy-five years continuous life of this society, unbroken by a single criminal prosecution, to declare its tenets contrary to the policy of the state?

ALLEGED MISUSE OF THE MONEY OF THE SOCIETY.

The amounts of the donations to withdrawing members are reiterated in appellants' brief, without stating that the Feucht litigation and the settlement made with the Feuchts of over $5,000 each, and also with Hugo Miller, who was startled by that trouble, fixed the donation to practically all those who withdrew. Such settlements the master and both the lower courts held were

> "certainly prudent and, under the circumstances, for the best interests of the society."
> (Record, p. 158).

The fact that the Harmony Society was a partner in the Economy Savings Bank, and hence liable for its debts, is not disputed; yet the appellants insist that Mr. Duss, instead of making any effort to prevent the bank from closing, should have filed a bill in equity and had a receiver appointed for the bank. Imagine the Harmony Society, when its own credit was practically gone, filing such a bill; and think of the desolation to thousands of innocent depositors, and the probable wreck of the society itself by such a course of conduct.

SURVIVORSHIP.

The appellants put the sole question in this case as to where the property of the society would go if all the members were dead but one. This one they prophetically announce as Mr. Duss; and changing a little the charges in their bill that Mr. Duss and *others* were to share in the assets, they now allege Mr. Duss is to pose as the *sole* survivor and get it all for himself alone. Poetic justice would be subserved if such result did follow, for, as we have seen, there would have been no property to fight about had it not been for him.

Certainly the appellants would be the celebrants of the irony of fate if,—*sans* contributions, *sans* work, *sans* membership, even *sans* any honest interest in the society,—they could seek to ruin it, and in the end seize the property Mr. Duss has saved.

Put aside the fanciful question and consider the real one.

Do not all the members of the society at any one time constitute *the* society, and may they not do with their own what they please?

The answer is Yes, as we have before seen.

The case of Cummack vs. Edwards (appellants' brief 57), so much relied upon by them, is markedly different, and the difference is conspicuously shown by a sentence from Judge Chitty's opinion.

Compared with the facts of our case, Judge Chitty said as the point of that case:

> "Where a man provides a fund by way of trust for payment of a specified annuity to his widow during her life, and makes no further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for payment of the annuity results to himself."

Now, compare this limited donation or payment for a specific purpose only with the words of the agreements of 1805, 1827, 1836 and see how radically they differ.

In the agreement of 1805 each gave his property to the society so that the society should hold it

> "as if he never had nor possessed it."

In the agreement of 1827 the conveyance was to Rapp and his associates and heirs,

> "all our property, real, personal and mixed, * * * as a free gift or donation for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a *perfect title* to the same in the said association."

In the agreement of 1836 they all say:

> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his *former contributions*, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be."

So too the sole purpose of the association in the Cummack case was to provide annuities for widows of the members, while in our case, as we have seen, the chief purpose was the accumulation of property. Judge Grier, in the Nachtrieb case, put the marked distinction between the Harmony Society and the one in the Cummack case thus:

The others contribute to give away for a specific purpose only while the Harmony Society

> "accumulated for themselves; they have, by joint labor, accumulated property of great value which they hold as joint owners."

See also the language of the Court of Appeals of New York in the Oneida community case, 137 *New York* 346.

COSTS.

The appellants having failed to sustain a single allegation of the bill as to conspiracy and fraud were rightly mulcted in the costs. The excuse now given that under Judge Acheson's ruling on a preliminary question as to the cross-examination of Mr. Duss, that the appellants could not *then* go into alleged breaches of trust by him or his alleged personal misconduct, avail them nothing.

As a fact after the master was appointed the appellants were permitted to go into all alleged personal misconduct of his as charged in the bill.

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